



Transcript of the Deposition of
Mary Kay Kolar, R.N.

Case: Cortney Kaiser v. The Monroe Clinic, Inc.; et al.

Taken On: June 24, 2020

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CORTNEY KAISER, individually, and)
as mother and next friend of)
C.B., a minor,)

Plaintiff,)

-vs-)

No. 3:19-cv-00315

THE MONROE CLINIC, INC.,)
JAMES J. EHLE, M.D., and)
WISCONSIN INJURED PATIENTS AND)
FAMILIES COMPENSATION FUND,)

Defendants.)

The videotaped deposition of
MARY KAY KOLAR, R.N., called for examination via
videoconference, taken pursuant to the Federal Rules of
Civil Procedure of the United States District Court
pertaining to the taking of depositions, taken before
Mary T. Murphy McGuirk, a Certified Shorthand Reporter
and Notary Public within and for the County of Cook,
State of Illinois, and a Certified Shorthand Reporter of
said state, on June 24, 2020, at 10:00 a.m. CST.

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1 APPEARANCES (via videoconference):

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16
17 Appeared on behalf of the Defendant
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Compensation Fund.

18
19 ALSO PRESENT (via teleconference):
20 Ms. Marion Buckley
Mr. Anthony Scardapane, Videographer
21
22
23
24

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EXHIBITS

No. 1082 referenced 28
No. 1079 referenced 34
No. 1078 referenced 97
No. 1080 referenced 116

(Exhibits 1078 to 1084 attached.)

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Page 4	<p>1 THE REPORTER: Before we proceed, I will ask</p> <p>2 counsel to agree on the record that under the</p> <p>3 current national emergency pursuant to Section 319</p> <p>4 of the Public Health Service Act, there is no</p> <p>5 objection to this deposition officer administering</p> <p>6 a binding oath to the witness remotely.</p> <p>7 Please state your agreement on the record.</p> <p>8 MR. CRANE: Agreed.</p> <p>9 MR. LEIB: Agreed.</p> <p>10 MR. WEIR: Todd Weir, yes.</p> <p>11 THE VIDEOGRAPHER: I have a time of 10:15,</p> <p>12 which is early, according to my -- is everyone</p> <p>13 here? I guess we got them. Okay.</p> <p>14 One moment.</p> <p>15 We are now on the record. This begins</p> <p>16 Videotape No. 1 of the deposition of Ms. Mary Kay</p> <p>17 Kolar in the matter of Cortney Kaiser versus Monroe</p> <p>18 Clinic and Wisconsin Injured Patients and Families,</p> <p>19 in the U.S. District Court, Western District of</p> <p>20 Wisconsin, Docket No. 3:19-cv-00315.</p> <p>21 Today is Wednesday, June 24th, 2020, and</p> <p>22 the time is 10:16 a.m. Central time. This</p> <p>23 deposition is being taken via remote virtual</p> <p>24 deposition at the request of the law firm of</p>	Page 6	<p>1 the life care plan that you prepared. Is that okay?</p> <p>2 A. That's fine.</p> <p>3 Q. Are you hearing me okay?</p> <p>4 A. I can hear you fine.</p> <p>5 Q. Okay. If at any --</p> <p>6 A. Go ahead.</p> <p>7 Q. If at any point in time you don't understand</p> <p>8 me, please -- please stop me and let me start again.</p> <p>9 The other thing, having done a lot of these lately, it's</p> <p>10 just -- it's even more important to wait until the</p> <p>11 question is done before you start answering. Okay?</p> <p>12 A. Okay.</p> <p>13 Q. Great. How many depositions have you given as</p> <p>14 a nurse life care planner?</p> <p>15 A. Two.</p> <p>16 Q. Okay. Do you remember the names of those</p> <p>17 depositions or the parties involved?</p> <p>18 A. One was Muman Abdulkaffi, A-b-d-u-l-k-a-f-f-i,</p> <p>19 and I cannot remember the other one. It was a motor</p> <p>20 vehicle accident in Eau Claire. I can't remember the</p> <p>21 name of that one.</p> <p>22 Q. But it was a motor vehicle in Eau Claire,</p> <p>23 Wisconsin?</p> <p>24 A. Correct.</p>
Page 5	<p>1 Coplan & Crane. The videographer for today is</p> <p>2 Anthony Scardapane of Magna Legal Services, and our</p> <p>3 court reporter is Mary McGuirk, also of Magna Legal</p> <p>4 Services.</p> <p>5 Will counsel and all parties present</p> <p>6 please state your appearance and who you represent?</p> <p>7 MR. CRANE: Ben Crane for the plaintiff.</p> <p>8 MR. LEIB: Samuel Leib of Leib Knott Gaynor,</p> <p>9 LLC, appearing for The Monroe Clinic and Dr. Joseph</p> <p>10 Ehle.</p> <p>11 MR. WEIR: Injured Patients and Families</p> <p>12 Compensation Fund appears by Todd Weir.</p> <p>13 MR. CRANE: All right. Let's go.</p> <p>14 THE VIDEOGRAPHER: Okay. Will the court</p> <p>15 reporter now please swear in the witness?</p> <p>16 (The witness was duly sworn.)</p> <p>17 THE VIDEOGRAPHER: Thank you. Please proceed.</p> <p>18 MARY KAY KOLAR, R.N.,</p> <p>19 called as a witness herein, having been first duly</p> <p>20 sworn, was examined and testified as follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. CRANE:</p> <p>23 Q. Good morning, Ms. Kolar. My name is</p> <p>24 Ben Crane. I'm going to ask you some questions about</p>	Page 7	<p>1 Q. And who retained you in that case?</p> <p>2 A. Beverly Wickstrom.</p> <p>3 Q. And who is Beverly Wickstrom? What firm is</p> <p>4 she with, and does she typically represent the plaintiff</p> <p>5 or the defendant?</p> <p>6 A. She is with the Wachs law firm.</p> <p>7 THE REPORTER: I'm sorry, Ms. Kolar? Could</p> <p>8 you please repeat?</p> <p>9 BY THE WITNESS:</p> <p>10 A. Yes. It's -- she's with Dana Wachs' firm, and</p> <p>11 she represents only plaintiffs.</p> <p>12 BY MR. CRANE:</p> <p>13 Q. Okay. And that was a motor vehicle crash.</p> <p>14 What type of injuries were involved?</p> <p>15 A. The woman was complaining, headaches, neck</p> <p>16 pain, general body injuries. Soft tissue, primarily.</p> <p>17 Q. And you prepared a life care plan?</p> <p>18 A. I did.</p> <p>19 Q. Okay. And the life care plan, was it -- is</p> <p>20 that something you still have access to?</p> <p>21 A. No.</p> <p>22 Q. When was that case?</p> <p>23 A. Three years ago.</p> <p>24 Q. You gave a deposition?</p>

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<p style="text-align: right;">Page 8</p> <p>1 A. Correct.</p> <p>2 Q. Okay. The life care plan that you -- you</p> <p>3 generated --</p> <p>4 (Audio distortion.)</p> <p>5 THE REPORTER: Sorry, Mr. Crane. We can't --</p> <p>6 Mr. Crane, there was interference. We can't hear</p> <p>7 you. Mr. Crane, we can't hear you.</p> <p>8 MR. LEIB: No. No. No. I can -- I can see</p> <p>9 you talking, but we can't hear you, Ben.</p> <p>10 No. Silence.</p> <p>11 THE REPORTER: Do you want to go off the</p> <p>12 record?</p> <p>13 THE VIDEOGRAPHER: Yeah, I'm going -- I'm</p> <p>14 going to go for here. The time now --</p> <p>15 MR. LEIB: Now -- now we can hear some.</p> <p>16 MR. CRANE: Can you hear me now?</p> <p>17 UNIDENTIFIED SPEAKER: Thank you for calling</p> <p>18 Magna Legal Services conference --</p> <p>19 MR. LEIB: Your lips were moving. Nothing was</p> <p>20 coming through. It was garbled. Now -- now it's</p> <p>21 not that bad.</p> <p>22 MR. CRANE: All right --</p> <p>23 MR. LEIB: Now you're just breaking up there.</p> <p>24 THE REPORTER: Mr. Leib, I can't hear you.</p>	<p style="text-align: right;">Page 10</p> <p>1 A. Well, that's --</p> <p>2 Q. -- computer program --</p> <p>3 A. Go ahead.</p> <p>4 Q. -- Word document. What is it?</p> <p>5 A. No. It's a Word document. And it has --</p> <p>6 there's an option that says "Insert." You can insert a</p> <p>7 table. So I insert a blank table, and then I complete</p> <p>8 it.</p> <p>9 Q. Okay. When you say you insert --</p> <p>10 A. I just -- go ahead.</p> <p>11 Q. I'm sorry. When you say you insert --</p> <p>12 A. That's okay.</p> <p>13 Q. -- a life table and then you complete it,</p> <p>14 where do you get the life table from which you then</p> <p>15 insert it into the Word document?</p> <p>16 A. I didn't make that clear. It's a blank table</p> <p>17 that's a Word option. And then I -- I fill in all the</p> <p>18 words.</p> <p>19 Q. Okay.</p> <p>20 A. I don't -- kind of program.</p> <p>21 THE REPORTER: I'm sorry, Ms. Kolar. That cut</p> <p>22 out. I don't something a program.</p> <p>23 BY THE WITNESS:</p> <p>24 A. I don't use any kind of a program.</p>
<p style="text-align: right;">Page 9</p> <p>1 MR. LEIB: Oh, really? Okay. I don't</p> <p>2 know. I'm on -- I'm on my cell phone. You know,</p> <p>3 there's something -- it must be something with</p> <p>4 the --</p> <p>5 THE REPORTER: You just need to get closer to</p> <p>6 it.</p> <p>7 MR. LEIB: To my cell phone?</p> <p>8 THE REPORTER: Yes.</p> <p>9 MR. LEIB: Okay. Can you hear me now?</p> <p>10 MR. CRANE: Mary, can you hear me okay?</p> <p>11 THE REPORTER: Mr. Crane, I can hear you.</p> <p>12 MR. CRANE: Ms. Kolar, how about you? Can you</p> <p>13 hear me okay?</p> <p>14 THE WITNESS: Yes, I can.</p> <p>15 MR. CRANE: All right. Very good. Let's go</p> <p>16 back on the record.</p> <p>17 THE VIDEOGRAPHER: We're still on, sir.</p> <p>18 MR. CRANE: Great.</p> <p>19 BY MR. CRANE:</p> <p>20 Q. All right. I'm looking at your report, and</p> <p>21 it's got tables in it to show the different costs and</p> <p>22 the different items that you're addressing. Just as a</p> <p>23 general proposition, how do you create that table? Do</p> <p>24 you use a --</p>	<p style="text-align: right;">Page 11</p> <p>1 BY MR. CRANE:</p> <p>2 Q. Okay. You're acquainted with the fact that</p> <p>3 those kinds of programs do exist. You just don't use</p> <p>4 them?</p> <p>5 A. Correct.</p> <p>6 Q. Very good. All right. The other case that</p> <p>7 you gave a deposition in on --</p> <p>8 (Audio distortion.)</p> <p>9 THE REPORTER: Mr. Crane, it's gone again.</p> <p>10 MR. CRANE: I'm going to -- I'm going to try</p> <p>11 and call in. I don't know why this is happening.</p> <p>12 (Indiscernible.)</p> <p>13 THE REPORTER: Can we go off, please?</p> <p>14 THE VIDEOGRAPHER: Yeah, yeah. The time</p> <p>15 now -- I'm sorry. The time now is 10:24 a.m. We</p> <p>16 are off the video record.</p> <p>17 (Discussion off the record.)</p> <p>18 THE VIDEOGRAPHER: The time is 10:26 a.m.</p> <p>19 We're back on the video.</p> <p>20 MR. LEIB: Mary, do you need a break already?</p> <p>21 MR. CRANE: I do.</p> <p>22 MR. LEIB: You're waving your hands. It looks</p> <p>23 like you've already gone through a four-hour</p> <p>24 deposition.</p>

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<p style="text-align: right;">Page 12</p> <p>1 MR. WEIR: She's just staying limber.</p> <p>2 MR. CRANE: Okay. Ready?</p> <p>3 THE VIDEOGRAPHER: We're back on the record,</p> <p>4 sir.</p> <p>5 BY MR. CRANE:</p> <p>6 Q. Okay. You mentioned, I think, the Abdulkaffi</p> <p>7 case?</p> <p>8 A. Correct.</p> <p>9 Q. Is that the other case you gave a deposition</p> <p>10 in?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And what did that case concern?</p> <p>13 A. That was a brain damaged -- or the claim of a</p> <p>14 brain damaged baby at birth.</p> <p>15 Q. And what side retained you in that case?</p> <p>16 A. The defense.</p> <p>17 Q. And who was the attorney that retained you?</p> <p>18 A. Mark Solheim, S-o-l-h-e-i-m. He's with the</p> <p>19 Larson firm in Minneapolis.</p> <p>20 Q. Did you testify at trial in either one of</p> <p>21 those cases?</p> <p>22 A. I'm sorry. What did you say?</p> <p>23 Q. Sure. Did you testify at trial in either one</p> <p>24 of the cases that we talked about?</p>	<p style="text-align: right;">Page 14</p> <p>1 A. No.</p> <p>2 Q. So can we take -- can we go back, say, from</p> <p>3 March 1st of 2020 to March 1st of 2019 -- can you give</p> <p>4 me a sense of how many arbitrations you participated in?</p> <p>5 A. Five.</p> <p>6 Q. And in those -- you know, in those</p> <p>7 arbitrations, if they're anything like the ones that</p> <p>8 I've sat through, you know, it's typically something</p> <p>9 where you can get it done in -- in maybe a half a day or</p> <p>10 maybe -- or be done by early afternoon kind of</p> <p>11 situation?</p> <p>12 A. More like an hour in Minneapolis.</p> <p>13 Q. Okay. Well, we call it the Windy City for a</p> <p>14 reason.</p> <p>15 All right. And then in terms of your time</p> <p>16 as a life care planner, you mentioned that, you know,</p> <p>17 you're working part-time. But how much -- how much</p> <p>18 time -- and let's use that same time frame, in the year</p> <p>19 of -- from -- from March 1st of 2019 through March 1st</p> <p>20 of 2020. Can you give me an idea, you know, how much</p> <p>21 you were working as a -- as a life care planner?</p> <p>22 A. It varies, but I would say on an average,</p> <p>23 probably ten hours a week.</p> <p>24 Q. And when did you start -- let me back up. In</p>
<p style="text-align: right;">Page 13</p> <p>1 A. No. They both settled.</p> <p>2 Q. All right. What is your profession?</p> <p>3 A. I am a certified life care planner as well as</p> <p>4 a registered nurse and an attorney.</p> <p>5 Q. Do you still actively practice law?</p> <p>6 A. I only do arbitrations through the American</p> <p>7 Arbitration Association as an arbitrator in no-fault</p> <p>8 cases.</p> <p>9 Q. So auto cases?</p> <p>10 A. Yes.</p> <p>11 Q. And then do you still practice nursing?</p> <p>12 A. No.</p> <p>13 Q. How long has that been true?</p> <p>14 A. 1986.</p> <p>15 Q. In terms of your professional time, can you</p> <p>16 give me a sense of how much time you spend as a lawyer</p> <p>17 and how much time as a certified life care planner? And</p> <p>18 to the extent that there's any overlap, please describe</p> <p>19 that.</p> <p>20 A. There is no overlap. I would say of the time</p> <p>21 I work, which is part-time, 95 percent is life care</p> <p>22 planning and 5 percent is the arbitrate.</p> <p>23 Q. So give me a sense. Since -- you know, since</p> <p>24 the pandemic hit, have you done any arbitration work?</p>	<p style="text-align: right;">Page 15</p> <p>1 your -- in your work as a life care planner, was there</p> <p>2 work that you performed that is not involving litigated</p> <p>3 matters?</p> <p>4 A. No.</p> <p>5 Q. A hundred percent of your work is litigation?</p> <p>6 A. Correct.</p> <p>7 Q. All right. And how long has that been true</p> <p>8 from now and go back into the past? Has that always</p> <p>9 been true, or is there a point in time where that wasn't</p> <p>10 true?</p> <p>11 A. No. That's always been true.</p> <p>12 Q. From your résumé -- or from your CV, it</p> <p>13 appears to me that you began doing life care planning</p> <p>14 work in 2013; is that about right?</p> <p>15 A. Correct.</p> <p>16 Q. And since 2013, can you give me a -- strike</p> <p>17 that.</p> <p>18 In every case that you get involved in,</p> <p>19 every litigated matter, do you prepare a life care plan</p> <p>20 such as the one that you've submitted in this case? And</p> <p>21 I say that very broadly, in the sense that, you know,</p> <p>22 you're putting pen to paper, creating tables, coming up</p> <p>23 with the future cost of things or the future -- future</p> <p>24 cost needs of things.</p>

6 (Pages 12 to 15)

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<p style="text-align: right;">Page 16</p> <p>1 A. In most -- I would say 98 percent of the time, 2 I prepare a full official life care -- like I did in 3 this case. I have been asked two or three times to 4 prepare more of a summary written report that an 5 attorney needed to help facilitate settlement. And, in 6 fact, I just prepared one last week. It was a 7 seven-page report. But it's more in the terms of a 8 letter. 9 Q. Got you. All right. So I want to talk about 10 the full official ones, the 98 percent. Okay? 11 A. Okay. 12 Q. Can you give me a -- can you give me a sense 13 of how many of those life care plans you've prepared 14 since 2013 in litigated matters? 15 A. Approximately 100. 16 Q. That's more than ten a year; is that fair? 17 A. Correct. 18 Q. Can you give me a sense of, are there -- you 19 know, of late, let's say in the last three years, has 20 that held true that you're looking at somewhere around 21 10 a year? 22 A. It's been more like 15. The last couple of 23 years, I've been busier. 24 Q. Has it been at least 15 a year for the last</p>	<p style="text-align: right;">Page 18</p> <p>1 (Off-the-record reporter clarification.) 2 BY THE WITNESS: 3 A. I said there are -- okay. There are the other 4 cases, the occasional other cases, but by far the 5 majority of my care plans have been for auto cases. 6 BY MR. CRANE: 7 Q. All right. A couple of things. How many of 8 those -- that 50 percent of defense cases, you mentioned 9 baby cases. How many baby cases have you worked on for 10 the defense where you generated a life care plan in a 11 litigated matter? 12 A. Seven. 13 Q. Are you sure about that? 14 A. Pardon me? 15 Q. Are you sure about that? 16 A. I would say somewhere between seven and ten. 17 I know it has not been more than ten. 18 Q. Okay. In those seven to ten cases where you 19 have prepared life care plans in litigated matters in -- 20 in baby cases, have you been retained by either of the 21 firms involved in this case, either Mr. Leib's firm or 22 Mr. Weir's firm? 23 A. Yes. 24 Q. On how many occasions of those seven to ten</p>
<p style="text-align: right;">Page 17</p> <p>1 three years? 2 A. I would say yes. 3 Q. Have you gone over 20 in some of the last 4 three years? 5 A. No. 6 Q. In these approximately 15 a year for the last 7 three years, are there -- is there a breakdown that 8 you're able to offer between plaintiff and defense when 9 you prepare these? 10 A. 50/50. 11 Q. When you -- let me just take care -- the 12 50 percent of the time where you're retained by the 13 defense, can you give me a sense of what types of cases 14 those involve? 15 A. All -- well, obviously, they're all 16 personal injury cases. I would say the majority 17 have been auto cases, auto accidents, but I have done 18 what I call baby cases, and I've done -- I did an 19 electrocution case, an assault case. I just wrote a 20 care plan in the last six months for a fellow that was 21 shot in the back after a bar brawl. 22 So there are things other -- motor 23 vehicle, but I would say by far more of the -- than -- 24 (Audio distortion.)</p>	<p style="text-align: right;">Page 19</p> <p>1 times? 2 A. Well, I wasn't retained by Mr. Leib's firm, 3 but he was on the case, the Abdulkaffi case I told you 4 earlier. 5 Q. Okay. 6 A. But it was another attorney that retained me. 7 Q. So you met Mr. Leib on this case, on this 8 other case? 9 A. No. I met his son Brenden. 10 Q. Okay. But you knew Mr. Leib was working on 11 the Abdulkaffi case? 12 A. Yes. 13 Q. Other than the Abdulkaffi case, have you 14 worked on any litigated matters with Mr. Leib's firm in 15 any way? 16 A. No. 17 Q. Okay. Same questions for Mr. Weir's firm. 18 A. No. 19 Q. How about a case involving The Monroe Clinic? 20 A. That was Mya Cook or Mya deCook. 21 Q. Okay. Is that through -- is that a 22 plaintiff's name? 23 A. That was, yes, the child's name. 24 Q. Mya DeCook?</p>

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<p style="text-align: right;">Page 20</p> <p>1 A. Correct.</p> <p>2 Q. And who retained you in that case?</p> <p>3 A. I have to think a minute.</p> <p>4 I think that was Mark Solheim as well.</p> <p>5 MR. LEIB: That -- that case has nothing to do</p> <p>6 with The Monroe Clinic. You're mistaken on that.</p> <p>7 THE REPORTER: I'm sorry, Mr. Leib --</p> <p>8 BY THE WITNESS:</p> <p>9 A. Oh, that was the one -- I'm sorry. Mr. Leib</p> <p>10 said that was not The Monroe Clinic. Monroe Clinic, I</p> <p>11 think, was the Abdulkaffi case. And Mya deCook was</p> <p>12 against Olmsted County.</p> <p>13 MR. LEIB: No. Do you want me to clarify?</p> <p>14 BY MR. CRANE:</p> <p>15 Q. Another case other than this particular case</p> <p>16 involving Monroe Clinic?</p> <p>17 A. Not that I can recall.</p> <p>18 Q. Okay. In the Abdulkaffi case, did you rely</p> <p>19 upon any other witnesses in that case's opinion, any</p> <p>20 other professional retained witnesses?</p> <p>21 A. No. I'm sorry. I can't remember that.</p> <p>22 That -- it was a while ago. I'm assuming -- I shouldn't</p> <p>23 assume. But typically in cases, it's -- I ask that one</p> <p>24 of the experts, whether it's plaintiff's or defense,</p>	<p style="text-align: right;">Page 22</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you believe, whether it's as a</p> <p>3 nurse, as a certified life care planner, or as an</p> <p>4 attorney for several years in trials, that without</p> <p>5 Dr. Simms giving blessing to your care plan, it lacks a</p> <p>6 proper foundation to be entered into court?</p> <p>7 MR. LEIB: Object to form and foundation.</p> <p>8 THE REPORTER: Sorry. Was that Mr. Weir?</p> <p>9 MR. WEIR: Calls for -- excuse me. It calls</p> <p>10 for a legal conclusion, and Simms is not the only</p> <p>11 physician in this case.</p> <p>12 BY MR. CRANE:</p> <p>13 Q. Go ahead.</p> <p>14 A. Okay. I would agree that a physician needs to</p> <p>15 lay the foundation for some of the opinions in my case,</p> <p>16 in my care plan. Not all. And as counsel has said,</p> <p>17 there are other physicians that can -- can certainly lay</p> <p>18 the foundation for my plan that have been retained in</p> <p>19 this case. And I don't know at this point who that will</p> <p>20 be.</p> <p>21 MR. CRANE: What -- what -- can you read back</p> <p>22 my -- my question, please, Ms. Court Reporter,</p> <p>23 Mary?</p> <p>24 (The record was read as requested.)</p>
<p style="text-align: right;">Page 21</p> <p>1 review my plan to lay the medical foundation that's</p> <p>2 necessary. So I am thinking that happened in</p> <p>3 Abdulkaffi, but I do not remember the name of the</p> <p>4 physician.</p> <p>5 Q. Would you agree with me that that did not</p> <p>6 happen in this case, that Dr. Simms did not review your</p> <p>7 plan?</p> <p>8 A. I --</p> <p>9 MR. LEIB: Let me just -- lack of foundation.</p> <p>10 You can go ahead.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I don't know if Dr. Simms has reviewed it. I</p> <p>13 have an understanding that any defense expert will be</p> <p>14 reviewing my care plan to lay the foundation.</p> <p>15 BY MR. CRANE:</p> <p>16 Q. And where do you gain that understanding</p> <p>17 from?</p> <p>18 A. From my conversations with defense counsel.</p> <p>19 Q. Okay. And did they tell you whether or not</p> <p>20 Dr. Simms had reviewed your care plan?</p> <p>21 A. No, they did not.</p> <p>22 Q. Is it your understanding based on everything</p> <p>23 that you know that Dr. Simms has yet to review your care</p> <p>24 plan?</p>	<p style="text-align: right;">Page 23</p> <p>1 BY MR. CRANE:</p> <p>2 Q. Can you answer the question?</p> <p>3 A. My answer is --</p> <p>4 MR. LEIB: Same objection.</p> <p>5 MR. WEIR: Object. Now it's repetitive. She</p> <p>6 did answer it.</p> <p>7 BY THE WITNESS:</p> <p>8 A. And my repeat answer --</p> <p>9 BY MR. CRANE:</p> <p>10 Q. Yeah. Go ahead. They're making objections.</p> <p>11 You can go ahead and answer.</p> <p>12 A. Okay. A physician needs to lay the foundation</p> <p>13 for some of the opinions in my care plan. Not all. And</p> <p>14 I don't know who that physician will be, but I've been</p> <p>15 told there will be a physician laying foundation. I</p> <p>16 would agree that some of the opinions in my care plan do</p> <p>17 require foundation.</p> <p>18 Q. Which ones?</p> <p>19 A. Primarily the ones --</p> <p>20 MR. LEIB: Object to form, overly broad.</p> <p>21 You can go ahead.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Primarily the ones relating to the future</p> <p>24 medical treatments after say the age of 13.</p>

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<p style="text-align: right;">Page 24</p> <p>1 BY MR. CRANE:</p> <p>2 Q. And under your plan, 13 is when he -- under</p> <p>3 one of your plans, 13 is when he would potentially go</p> <p>4 into a nursing facility of some sort?</p> <p>5 A. Under option 3, yes.</p> <p>6 Q. Right. And so you don't have the foundation</p> <p>7 for that opinion without Dr. Simms providing the</p> <p>8 foundation or some other physician providing the</p> <p>9 foundation?</p> <p>10 MR. LEIB: Object to the form.</p> <p>11 MR. WEIR: Object, calls for a legal</p> <p>12 conclusion.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Foundation, are you saying that -- do I</p> <p>15 believe I need foundation about him going into a</p> <p>16 facility?</p> <p>17 BY MR. CRANE:</p> <p>18 Q. You're not qualified to render an opinion as</p> <p>19 to when he is appropriate to go into a facility, fair?</p> <p>20 A. No. That's not fair.</p> <p>21 Q. Okay.</p> <p>22 A. He would be --</p> <p>23 Q. Go ahead. Why isn't it fair?</p> <p>24 A. Because he could go into the facility that I</p>	<p style="text-align: right;">Page 26</p> <p>1 with that.</p> <p>2 BY THE WITNESS:</p> <p>3 A. You did not --</p> <p>4 THE WITNESS: Should I go?</p> <p>5 MR. LEIB: Yeah.</p> <p>6 BY THE WITNESS:</p> <p>7 A. You do not need a physician's order to start</p> <p>8 the process of a -- of a person going into a long-term</p> <p>9 care facility. If someone -- let me -- as I -- I'll</p> <p>10 explain. If a person has dementia and they start</p> <p>11 getting confused -- care that a family member can't</p> <p>12 provide, the family could contact the nursing home and</p> <p>13 start the process of getting the patient. And the</p> <p>14 facility physician does the initial admitting exam and</p> <p>15 writes the order.</p> <p>16 BY MR. CRANE:</p> <p>17 Q. Did you contact the Marklund Wasmond Center as</p> <p>18 part of your investigation?</p> <p>19 A. I did.</p> <p>20 Q. And who did you speak with there?</p> <p>21 A. I spoke with the (inaudible) administrator</p> <p>22 and --</p> <p>23 (Audio distortion.)</p> <p>24 (Off-the-record reporter clarification.)</p>
<p style="text-align: right;">Page 25</p> <p>1 have laid in my plan now. That's a parent's</p> <p>2 decision. That is a qualified facility more than</p> <p>3 capable of providing any care that C.B. would</p> <p>4 require if the parents decided tomorrow that they</p> <p>5 wanted him to go live there. That's not something a</p> <p>6 physician has to order.</p> <p>7 Q. As a nurse, did you ever admit a patient into</p> <p>8 a nursing home?</p> <p>9 A. No.</p> <p>10 Q. Why not?</p> <p>11 A. Well, because most patients when</p> <p>12 they go into a nursing home go from a hospital,</p> <p>13 and the physician will write an order, or the</p> <p>14 facility themselves have physicians as the</p> <p>15 Marklund facility.</p> <p>16 Q. Right. You need a physician's order to put</p> <p>17 somebody into a nursing home, don't you?</p> <p>18 A. No.</p> <p>19 MR. LEIB: Object to the form of the question.</p> <p>20 It's -- first of all, there's a lack of foundation,</p> <p>21 and it's calling for a legal opinion.</p> <p>22 MR. CRANE: That was -- that one is a nursing</p> <p>23 opinion.</p> <p>24 MR. LEIB: Well, we can -- we can disagree</p>	<p style="text-align: right;">Page 27</p> <p>1 BY THE WITNESS:</p> <p>2 A. I spoke with the center's administrator,</p> <p>3 Michelle Orwig, O-r-w-i-g, and I spoke with the facility</p> <p>4 social worker, Natalie Rubino, R-u-b-i-n-o.</p> <p>5 BY MR. CRANE:</p> <p>6 Q. Did either one of them tell you they were</p> <p>7 willing to accept a patient without a physician's order?</p> <p>8 A. We didn't discuss that. I told them what</p> <p>9 C.B. medical needs are, and they said that he would</p> <p>10 be -- he qualified to be admitted to their facility</p> <p>11 based on his tube feeding, which is --</p> <p>12 (Audio distortion.)</p> <p>13 (Off-the-record reporter clarification.)</p> <p>14 BY THE WITNESS:</p> <p>15 A. He would be an appropriate candidate for their</p> <p>16 facility based on his tube feeding and his seizures.</p> <p>17 BY MR. CRANE:</p> <p>18 Q. So you mentioned that some but not all of your</p> <p>19 opinions require a medical doctor's blessing for proper</p> <p>20 foundation. You mentioned the one that you had</p> <p>21 difficulty or that you might have some problems after 13</p> <p>22 was the medical care -- or was the future medical care</p> <p>23 after 13 was the issue that you believed required M.D.</p> <p>24 foundation, right?</p>

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Page 28	<p>1 A. Correct.</p> <p>2 Q. All right. So what I'd like to do is tease</p> <p>3 out -- I'm going to option 1, option 2, option 3. It's</p> <p>4 on page 24 and 25 of the report. And I'm going to share</p> <p>5 my screen.</p> <p>6 MR. CRANE: Oh, can I have -- Anthony, can you</p> <p>7 allow me to share my screen?</p> <p>8 THE VIDEOGRAPHER: Sure. Yes, sir. Yes, sir.</p> <p>9 Coming up.</p> <p>10 MR. CRANE: You can call me Ben.</p> <p>11 THE VIDEOGRAPHER: You should be able to do it</p> <p>12 now, sir.</p> <p>13 MR. CRANE: All right.</p> <p>14 Okay. We are -- and I -- I sent this</p> <p>15 around -- or Julia sent it around to the court</p> <p>16 reporter, following the same format, along the left</p> <p>17 here, Sam and Todd. Start with Exhibit -- we have</p> <p>18 1078 is her CV all the way through 1084, which is</p> <p>19 correspondence. So what I'd like to look at is</p> <p>20 1082. And I'm going to go to page 24.</p> <p>21 (Exhibit No. 1082 referenced.)</p> <p>22 BY MR. CRANE:</p> <p>23 Q. Okay. All right. So I'm looking at</p> <p>24 Exhibit 1082, option 1. Is this -- is this from page 24</p>	Page 30	<p>1 Q. And the same would hold true under option 3,</p> <p>2 true?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Why do you have the foundation then</p> <p>5 without M.D. blessing -- strike that.</p> <p>6 We can agree that as far as you know --</p> <p>7 and certainly -- well, here. I've never been told any</p> <p>8 M.D. has blessed your life care plan. Do you know</p> <p>9 something different?</p> <p>10 A. Not at this point.</p> <p>11 MR. LEIB: Object to the form of the question.</p> <p>12 You can go ahead.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Not at this point.</p> <p>15 BY MR. CRANE:</p> <p>16 Q. Okay. Do you know something I don't know? Do</p> <p>17 you except some doctor to give your report a blessing?</p> <p>18 Have you been told that there's a doctor that has</p> <p>19 blessed your report, if you know?</p> <p>20 MR. LEIB: Object to form again.</p> <p>21 THE REPORTER: I'm sorry. Mr. Leib, object to</p> <p>22 form?</p> <p>23 MR. LEIB: Yeah.</p> <p>24 THE REPORTER: And Ms. Kolar?</p>
Page 29	<p>1 of your report, Ms. Kolar?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then I am looking at option 1. I</p> <p>4 am looking at -- there's a column -- or there's a</p> <p>5 heading "Medical Care" and then there's one that says</p> <p>6 "Age 4 through Age 13" and then "Age 13 through Age 33."</p> <p>7 Do you see that right there?</p> <p>8 A. Correct.</p> <p>9 Q. Under option 1, age 13 through age 33 is</p> <p>10 \$131,160. Do I have that right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And would you agree with me that you do</p> <p>13 not, without the blessing of an M.D., have the</p> <p>14 foundation to offer an opinion regarding medical care,</p> <p>15 age 13 through age 33; is that correct?</p> <p>16 MR. LEIB: Object to form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I would agree with that.</p> <p>19 BY MR. CRANE:</p> <p>20 Q. Okay. And if you go to option 2, same number,</p> <p>21 same -- same issue. Do you agree that you, without an</p> <p>22 M.D. blessing, don't have the foundation for age 13</p> <p>23 through age 33 of this \$131,160 amount?</p> <p>24 A. Yes.</p>	Page 31	<p>1 BY THE WITNESS:</p> <p>2 A. I have been told that some of the defense</p> <p>3 experts will be reviewing my report or are reviewing my</p> <p>4 report. I have not been told who or what the results</p> <p>5 are.</p> <p>6 BY MR. CRANE:</p> <p>7 Q. Okay. Has Dr. Simms to your knowledge</p> <p>8 reviewed your report?</p> <p>9 MR. LEIB: Objection. It's been asked and</p> <p>10 answered.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I don't know.</p> <p>13 BY MR. CRANE:</p> <p>14 Q. Okay. Have you spoken with Dr. Simms at all</p> <p>15 about this case?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. How many times have you talked with</p> <p>18 Dr. Simms about this case?</p> <p>19 A. Once.</p> <p>20 Q. When did you speak with Dr. Simms about this</p> <p>21 case that one time?</p> <p>22 A. Two or three weeks ago.</p> <p>23 Q. Was it before or after he gave his deposition?</p> <p>24 A. I don't remember -- I don't -- I don't know</p>

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<p>1 that.</p> <p>2 Q. Okay. Do you have any information that will</p> <p>3 tell us exactly when two or three weeks ago you spoke to</p> <p>4 Dr. Simms that one time?</p> <p>5 A. Yes, but if I try to get at it, I might lose</p> <p>6 you all.</p> <p>7 Q. I think -- here, if you -- if you minimize it,</p> <p>8 minimize the Zoom screen, just using that little --</p> <p>9 little dash at the top, you can get at anything on your</p> <p>10 computer, and it won't share anything until you've given</p> <p>11 permission to share your screen. So whatever you're</p> <p>12 looking at, we're not going to be able to see. So if</p> <p>13 you have something that can pinpoint when you talked to</p> <p>14 Dr. -- Dr. Simms, that would be helpful.</p> <p>15 (Short pause.)</p> <p>16 BY THE WITNESS:</p> <p>17 A. I'm trying.</p> <p>18 BY MR. CRANE:</p> <p>19 Q. No. I get it. Take your time. I mean, we</p> <p>20 live in a different world. We -- we all -- everybody is</p> <p>21 kinder and has more patience. I used to be a lot worse.</p> <p>22 A. That's good.</p> <p>23 MR. LEIB: We're hoping you ramp that up, Ben.</p> <p>24 MR. CRANE: Oh, I'm -- I'm just getting</p>	<p>1 A. No. It -- I thought there was one, but the</p> <p>2 invoices I looked at right now are separate invoices.</p> <p>3 It doesn't break it out. And I don't have any -- the</p> <p>4 notes I took -- briefly notes on that meeting, doesn't</p> <p>5 have a date on it. And it was -- I know it was at least</p> <p>6 two weeks ago.</p> <p>7 Q. All right. Well, today --</p> <p>8 MR. LEIB: Check the rider then. Check the</p> <p>9 rider.</p> <p>10 THE WITNESS: Check what?</p> <p>11 MR. LEIB: No. I'm talking to Ben.</p> <p>12 Check the rider. She sent it to -- sent</p> <p>13 it to us. It should be contained with the rider.</p> <p>14 MR. CRANE: I'm not seeing it.</p> <p>15 Oh, I -- I lied. Here we go. I've got</p> <p>16 them.</p> <p>17 All right. So it does not -- skipped</p> <p>18 right over it.</p> <p>19 (Exhibit No. 1079 referenced.)</p> <p>20 BY MR. CRANE:</p> <p>21 Q. I see one invoice here. We've marked it as</p> <p>22 Exhibit 1079. It's for 35 hours of work, \$6,125. But</p> <p>23 there's no indication that Dr. Simms was contacted or</p> <p>24 discussed, that you had any conversation with him.</p>
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<p>1 started. I started -- I just changed my diet, Sam.</p> <p>2 Watch out.</p> <p>3 MR. LEIB: Okay.</p> <p>4 THE VIDEOGRAPHER: Mr. Crane, do you want me</p> <p>5 to go off the video?</p> <p>6 MR. CRANE: Does it really matter? I mean,</p> <p>7 you can.</p> <p>8 THE VIDEOGRAPHER: No, not to us. Just to</p> <p>9 you.</p> <p>10 MR. CRANE: Do you charge me when the -- when</p> <p>11 the digital thing is running more?</p> <p>12 THE VIDEOGRAPHER: There's no meter, no.</p> <p>13 MR. CRANE: Got you. All right.</p> <p>14 Sam, I'm not seeing any invoices or bills</p> <p>15 as far as I can tell from what I'm looking at. If</p> <p>16 you guys -- and that may be where she can look to</p> <p>17 find this answer.</p> <p>18 MR. LEIB: Mary Kay, did you send us any</p> <p>19 invoices or bills?</p> <p>20 THE WITNESS: I did.</p> <p>21 BY MR. CRANE:</p> <p>22 Q. I don't know -- I don't know. Maybe those</p> <p>23 would have some information about when you talked to</p> <p>24 Dr. Simms on them?</p>	<p>1 Is that -- so do you believe -- with all of that</p> <p>2 background -- that's not really a question.</p> <p>3 The conversation with Dr. Simms would have</p> <p>4 happened at some point after May 6th; is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. And given it's June 24th, do you believe that</p> <p>7 you spoke with him somewhere in the -- somewhere around</p> <p>8 June 10th or thereabouts?</p> <p>9 A. In the first or second week of June is when I</p> <p>10 believe I talked to him.</p> <p>11 Q. Okay. And when you talked to him, you had --</p> <p>12 you had already seen his May 26 -- or excuse me,</p> <p>13 May 22nd report?</p> <p>14 A. Is that his IME?</p> <p>15 Q. You can call it that. I'm not going to. But</p> <p>16 the examination and then he gave a report on life</p> <p>17 expectancy.</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. And it was --</p> <p>21 Q. Do you have that -- do you have that document?</p> <p>22 A. I have it in my --</p> <p>23 (Audio distortion.)</p> <p>24 (Off-the-record reporter clarification.)</p>

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Page 36	<p>1 BY THE WITNESS:</p> <p>2 A. I have it. I don't have it in the documents I</p> <p>3 have right now --</p> <p>4 BY MR. CRANE:</p> <p>5 Q. Is all --</p> <p>6 A. -- for obvious reasons.</p> <p>7 Q. Is -- all I want to know is, is it dated</p> <p>8 May 22nd?</p> <p>9 A. Yes.</p> <p>10 Q. And do you have any other reports from</p> <p>11 Dr. Simms?</p> <p>12 A. No.</p> <p>13 Q. Okay. And so when you spoke with Dr. Simms --</p> <p>14 (Audio distortion.)</p> <p>15 (Off-the-record reporter clarification.)</p> <p>16 BY MR. CRANE:</p> <p>17 Q. Yeah. I'm going to back up. There's somebody</p> <p>18 else kind of talking.</p> <p>19 Can you hear me okay, Ms. Kolar?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. Okay. So when you talked to Dr. Simms at some</p> <p>22 point in the first two weeks of June, what was the</p> <p>23 purpose of your conversation?</p> <p>24 A. We were talking about life expectancy.</p>	Page 38	<p>1 33 would be what Dr. Simms would testify to, and that's</p> <p>2 why what I decided -- or what I should use in my care</p> <p>3 plan because that is something that needs medical</p> <p>4 foundation.</p> <p>5 Q. Okay. And was there any other information</p> <p>6 that you were relying upon other than the direction by</p> <p>7 Mr. Leib to -- to reach that 33-year life expectancy or</p> <p>8 to use that 33-year --</p> <p>9 A. No.</p> <p>10 Q. -- life expectancy?</p> <p>11 A. No.</p> <p>12 Q. Dr. Simms didn't call you and say you should</p> <p>13 use something different, right?</p> <p>14 A. No, he did not.</p> <p>15 Q. Dr. Simms didn't provide you with a revised or</p> <p>16 amended report, did he?</p> <p>17 A. No, not that I -- no. I have not --</p> <p>18 Q. You relied upon -- you relied upon what the</p> <p>19 attorney told you in developing the life expectancy</p> <p>20 framework for your life care plan?</p> <p>21 A. Yes.</p> <p>22 MR. LEIB: Object to the form of the question.</p> <p>23 I think it's been asked and answered.</p> <p>24 You can go ahead.</p>
Page 37	<p>1 Q. Okay. And what did he tell you about life</p> <p>2 expectancy?</p> <p>3 A. That we -- at that point, I believed</p> <p>4 his life expectancy projection was perhaps to</p> <p>5 age 24 or 26 because I know he had not -- if I'm</p> <p>6 remembering, I don't believe he had evaluated or</p> <p>7 seen [C.B.] personally, because after he saw him,</p> <p>8 that's when his opinion, age 33 life expectancy, was</p> <p>9 given to me.</p> <p>10 Q. So at some point in time prior to the age 33</p> <p>11 life expectancy being given to you, you were of the</p> <p>12 understanding that he had an opinion that his life</p> <p>13 expectancy was less than that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And when you were given the age 33 life</p> <p>16 expectancy, who gave that to you?</p> <p>17 A. That --</p> <p>18 (Audio distortion.)</p> <p>19 BY MR. CRANE:</p> <p>20 Q. I'm sorry. I didn't hear your answer.</p> <p>21 A. The defense attorneys, Mr. Leib, Brenden.</p> <p>22 Q. Did Mr. Leib tell you to use one life</p> <p>23 expectancy over another?</p> <p>24 A. He said that 30 -- the life expectancy to age</p>	Page 39	<p>1 BY THE WITNESS:</p> <p>2 A. Yes.</p> <p>3 BY MR. CRANE:</p> <p>4 Q. Okay. Other than -- I'm coming back to your</p> <p>5 qualification to render opinions without some sort of</p> <p>6 blessing from an M.D. Other than future medical</p> <p>7 treatment after 13 -- let me pull this on the screen --</p> <p>8 up on the screen. And we'll start with -- we'll go back</p> <p>9 to that first one you ran, option 1.</p> <p>10 Are there other items on option 1 that you</p> <p>11 believe could or might require an M.D. blessing for</p> <p>12 foundation?</p> <p>13 A. No.</p> <p>14 Q. That's the only one?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Where do you derive the foundation for</p> <p>17 what medications he needs?</p> <p>18 A. From what he's currently receiving and also</p> <p>19 the ones on my care plan are exactly the same as what</p> <p>20 Dr. Yarkony has in his care plan, which he's laying the</p> <p>21 foundation for except for the ones for [C.B.]</p> <p>22 allergies, which are not related to his cerebral palsy.</p> <p>23 Q. Okay. You're relying upon Dr. Yarkony's</p> <p>24 opinions for option 1, medications. Do I have that</p>

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<p style="text-align: right;">Page 40</p> <p>1 correct?</p> <p>2 MR. LEIB: Object to form, misstates the</p> <p>3 testimony.</p> <p>4 Go ahead.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Okay. Sorry.</p> <p>7 I'm relying on not only what's in</p> <p>8 Yarkony's report, but also what -- what medications</p> <p>9 C.B. was taking, according to his medical records at</p> <p>10 the time I prepared my report and based on the records</p> <p>11 that I had at that time. He's taking different things</p> <p>12 now, but I didn't have those updated records when I</p> <p>13 gave -- or when I sent my report.</p> <p>14 BY MR. CRANE:</p> <p>15 Q. Okay. Option 1, it doesn't relate to medical</p> <p>16 treatment in the past, does it, like it's not --</p> <p>17 A. No.</p> <p>18 Q. This isn't a -- this isn't a tally of what's</p> <p>19 been charged. This is all for the future, right?</p> <p>20 A. Correct.</p> <p>21 Q. So you're utilizing -- did -- did you utilize</p> <p>22 Dr. Yarkony's numbers for medication in total?</p> <p>23 MR. LEIB: Object to the form. It's been</p> <p>24 asked and answered.</p>	<p style="text-align: right;">Page 42</p> <p>1 MR. LEIB: Object just to the extent whatever</p> <p>2 the report says is what the report says. It speaks</p> <p>3 for itself.</p> <p>4 You can go ahead.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I don't think his report addressed that</p> <p>7 specifically.</p> <p>8 BY MR. CRANE:</p> <p>9 Q. And so the totality of the foundation that you</p> <p>10 have for excluding allergy medication from the life care</p> <p>11 plan is a conversation that you had with Dr. Simms at</p> <p>12 some point in the first two weeks of June?</p> <p>13 MR. LEIB: Objection. It's been asked and</p> <p>14 answered.</p> <p>15 BY THE WITNESS:</p> <p>16 A. That's correct, but it's also based on my</p> <p>17 nursing experience, that being allergic to chickens or</p> <p>18 eggs and dogs and cats is an inborn trait that has</p> <p>19 nothing to do with cerebral palsy.</p> <p>20 BY MR. CRANE:</p> <p>21 Q. You're not a geneticist, are you?</p> <p>22 A. No, I'm not.</p> <p>23 Q. You're not a neurologist?</p> <p>24 A. No, I'm not.</p>
<p style="text-align: right;">Page 41</p> <p>1 You can go ahead.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I used actually a correlated source,</p> <p>4 which was the new University of Wisconsin bills for what</p> <p>5 the medications cost. So these are the ones --</p> <p>6 Q. Okay.</p> <p>7 A. -- allergies.</p> <p>8 (Audio distortion.)</p> <p>9 (Off-the-record reporter clarification.)</p> <p>10 BY THE WITNESS:</p> <p>11 A. But I deleted the medications relating to his</p> <p>12 allergies.</p> <p>13 BY MR. CRANE:</p> <p>14 Q. Why?</p> <p>15 A. Because his allergies are not related to his</p> <p>16 cerebral palsy.</p> <p>17 Q. Whose opinion are you relying upon for that?</p> <p>18 A. That was something Dr. Simms and I discussed</p> <p>19 during our phone call.</p> <p>20 Q. Which you don't know when it was?</p> <p>21 A. Right.</p> <p>22 Q. You're not relying -- there's nothing in</p> <p>23 Dr. Simms's report that says that you shouldn't account</p> <p>24 for his allergies, is there?</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. You're not an allergist?</p> <p>2 A. No, I'm not. I'm not a physician. But I</p> <p>3 would think any physician you ask is if his allergies</p> <p>4 are related to his cerebral palsy, no one will say they</p> <p>5 are.</p> <p>6 Q. I'm just talking about the foundation for your</p> <p>7 life care plan.</p> <p>8 A. I understand, and I'm telling you that you</p> <p>9 don't have to be a physician to know that allergy</p> <p>10 medications are not related to cerebral palsy.</p> <p>11 Q. Would you agree you have to have proper</p> <p>12 foundation to have a life care plan, and in certain</p> <p>13 instances, you need an M.D. to give that blessing, don't</p> <p>14 you?</p> <p>15 MR. LEIB: Object to the form of the question.</p> <p>16 It's been asked and answered, and it's for the</p> <p>17 Court to decide whether or not there's foundation.</p> <p>18 MR. WEIR: It's also vague.</p> <p>19 BY THE WITNESS:</p> <p>20 A. Foundation is -- is required for certain</p> <p>21 aspects of a life care plan.</p> <p>22 BY MR. CRANE:</p> <p>23 Q. Okay. Where did you get the information on</p> <p>24 disposable medical goods under option 1?</p>

13 (Pages 40 to 43)

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<p style="text-align: right;">Page 44</p> <p>1 A. From Ms. -- from Ms. Kaiser's deposition --</p> <p>2 Q. Okay.</p> <p>3 A. -- from Dr. -- Dr. Yarkony's report, and from</p> <p>4 my research of costs on the Internet.</p> <p>5 Q. Your -- your research of what?</p> <p>6 A. Costs.</p> <p>7 Q. Okay.</p> <p>8 A. How much did it cost?</p> <p>9 Q. Have you taken notes or -- I mean, in any way</p> <p>10 memorialized the research that you've done?</p> <p>11 A. No. I research and type at the same time.</p> <p>12 Q. And -- and the typing is all in this document</p> <p>13 that you've produced, the life care plan of C.B.</p> <p>14 Babler, Exhibit 1082?</p> <p>15 A. Yes. Yes.</p> <p>16 Q. So over time -- over time, this -- this was a</p> <p>17 living, breathing document, and as you went through, if</p> <p>18 you've had conversation and you've reviewed medical</p> <p>19 records, would you type into this document?</p> <p>20 A. Yes.</p> <p>21 Q. In terms of reviewing medical records, do you</p> <p>22 use any sort of software or anything along those lines</p> <p>23 to organize your medical records?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 46</p> <p>1 of the life care plan?</p> <p>2 A. Yes. Under "Miscellaneous Expenses."</p> <p>3 Q. All right. Right above that, there's a</p> <p>4 sentence. It's -- the sentence begins, "The cost of the</p> <p>5 vehicle is not included."</p> <p>6 A. Correct.</p> <p>7 Q. Can you explain that for me?</p> <p>8 A. The family needs a vehicle, and so that's an</p> <p>9 expense they would incur regardless of whether C.B.</p> <p>10 has cerebral palsy. So in life care plans, the standard</p> <p>11 is to include the costs of the modification of the</p> <p>12 vehicle to make it handicap accessible, but not the</p> <p>13 vehicle itself.</p> <p>14 Q. Does the standard of care for certified nurse</p> <p>15 life care planners require that you exclude the costs of</p> <p>16 the vehicle from miscellaneous expenses and only include</p> <p>17 that for modifications?</p> <p>18 A. I would say yes -- it's not nurse -- there's a</p> <p>19 difference between life care planners and nurse life</p> <p>20 care planners. That's a distinction. I am a certified</p> <p>21 life care planner even though I am a nurse.</p> <p>22 Q. Okay. Let me -- let me ask it -- and thank</p> <p>23 you for making that distinction. I'm going to go ahead</p> <p>24 and clean it up with that understanding.</p>
<p style="text-align: right;">Page 45</p> <p>1 Q. Do you have paper copies of the medical</p> <p>2 records, or are they all on -- all on computer?</p> <p>3 A. They were provided online.</p> <p>4 Q. Okay. And then did you print them out? Do</p> <p>5 you have paper copies now?</p> <p>6 A. No.</p> <p>7 Q. Okay. All of your review occurred digitally</p> <p>8 of this -- of this case?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Would you have taken notes about your</p> <p>11 conversation with Dr. Simms in this living, breathing</p> <p>12 document that we were just talking about?</p> <p>13 A. I would have -- and let me see. I'm not -- I</p> <p>14 don't know if I did. And if I did, they were just</p> <p>15 shorthand.</p> <p>16 Q. And then you would have typed over those notes</p> <p>17 in this living, breathing document?</p> <p>18 A. Yes.</p> <p>19 Q. Did you also -- I -- I see in your report you</p> <p>20 have expense for a handicapped accessible van?</p> <p>21 A. Yes.</p> <p>22 Q. It's on page 22 of your report?</p> <p>23 A. Yes.</p> <p>24 Q. Did you ultimately include that in the costs</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Okay.</p> <p>2 Q. Does the standard of care require of certified</p> <p>3 life care planners that they exclude the cost of the</p> <p>4 entire vehicle and only include those things that would</p> <p>5 be necessary to modify the vehicle to be handicap</p> <p>6 accessible?</p> <p>7 MR. LEIB: Object to the form. It's vague.</p> <p>8 You can go ahead.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I don't know if I would say that the standard</p> <p>11 of care requires that it be excluded. It's more proper</p> <p>12 to say standard of care is that only the cost of the</p> <p>13 modification is included.</p> <p>14 BY MR. CRANE:</p> <p>15 Q. Is that standard of care defined somewhere?</p> <p>16 A. No.</p> <p>17 Q. And where do you derive your opinion that the</p> <p>18 standard of care is to not include that?</p> <p>19 A. From my training when I went through</p> <p>20 the program to obtain my certification as well as my</p> <p>21 review of probably at least 50 to a hundred other life</p> <p>22 care plans prepared by other life care planners, none of</p> <p>23 them include the cost of the vehicle other than</p> <p>24 Dr. Yarkony.</p>

14 (Pages 44 to 47)

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Page 48	<p>1 Q. All right. So you -- you mentioned your</p> <p>2 training?</p> <p>3 A. Correct.</p> <p>4 Q. What else helps you form your -- your</p> <p>5 understanding of the standard of care?</p> <p>6 A. My seven years of experience as a life care</p> <p>7 planner and my 30-some years' experience as a trial</p> <p>8 attorney working with life care planners.</p> <p>9 Q. Do you believe without your 30 years of trial</p> <p>10 experience you would still be qualified to render an</p> <p>11 opinion on the standard of care of a certified life care</p> <p>12 planner?</p> <p>13 MR. LEIB: Object to the form of the question.</p> <p>14 It -- it's for the Court to decide. It's a legal</p> <p>15 conclusion.</p> <p>16 BY THE WITNESS:</p> <p>17 A. You can -- yes, yes. I would -- to be a</p> <p>18 certified life care planner, you need to have an</p> <p>19 underlying license in a medical type of a field, which</p> <p>20 means physical therapy, occupational therapy, speech</p> <p>21 therapy, social work, registered nurse. You have to</p> <p>22 have a license that's active before you can become a</p> <p>23 life care planner. But once you're a life care planner,</p> <p>24 you do not have to have trial experience.</p>	Page 50	<p>1 attended at the University of Florida, which is an</p> <p>2 accredited program in which you have to perpetuate from</p> <p>3 in order to be able to take the exam that allows you to</p> <p>4 become certified.</p> <p>5 Q. And are there any other programs in the</p> <p>6 country other than the one at Florida?</p> <p>7 A. There are many.</p> <p>8 Q. Okay. Why did you choose the one at Florida</p> <p>9 over one of the many others?</p> <p>10 A. Because the one at the University of Florida</p> <p>11 was the very first program. It's where the whole</p> <p>12 occupation of life care planners started. It has an</p> <p>13 excellent reputation, and I searched it plus a few other</p> <p>14 programs and felt that the University of Florida had a</p> <p>15 program that I wanted to pursue --</p> <p>16 (Audio distortion.)</p> <p>17 THE REPORTER: Sorry. That I wanted to what?</p> <p>18 BY THE WITNESS:</p> <p>19 A. Pursue.</p> <p>20 BY MR. CRANE:</p> <p>21 Q. Did you -- did you investigate any other</p> <p>22 programs?</p> <p>23 A. Yes. But I can't remember the names.</p> <p>24 Q. Okay. Are there programs for certified life</p>
Page 49	<p>1 BY MR. CRANE:</p> <p>2 Q. Okay. So what allows you to become a life</p> <p>3 care planner is your background as a -- as a nurse</p> <p>4 rather than your background as a trial attorney?</p> <p>5 A. Yes.</p> <p>6 Q. All right. And at the point that you became a</p> <p>7 life care planner, it had been approximately 27 years</p> <p>8 since you had last treated a patient?</p> <p>9 A. Yes.</p> <p>10 Q. So it's your training, your seven years of</p> <p>11 experience, and your 30 years as a trial lawyer that</p> <p>12 believes your -- that qualifies you to render this --</p> <p>13 your opinion on what the standard of care is for a</p> <p>14 certified life care planner. Do I have that right?</p> <p>15 A. Yes.</p> <p>16 MR. LEIB: Objection. Object to the form.</p> <p>17 It's been asked and answered.</p> <p>18 BY MR. CRANE:</p> <p>19 Q. What about -- what is it about your training?</p> <p>20 What were you trained what the standard of care was and</p> <p>21 who were you trained by?</p> <p>22 A. As a life care planner?</p> <p>23 Q. Yes.</p> <p>24 A. My program was a certification program that I</p>	Page 51	<p>1 care planners anywhere in the Midwest?</p> <p>2 A. I don't think so.</p> <p>3 Q. Okay. The -- the one at the University of</p> <p>4 Florida, what -- what was the -- what commitment did you</p> <p>5 have to make in order to receive that certification or</p> <p>6 that training for the certification, to complete that</p> <p>7 program, I guess?</p> <p>8 A. What do you mean "commitment"?</p> <p>9 Q. Yeah. What's the time commitment? What's</p> <p>10 the -- you know, how many -- you know, is it a -- is it</p> <p>11 a -- it's not a four-year program where you're going</p> <p>12 20 hours a week to school. It's not like law school.</p> <p>13 Can you give me a sense of what you had to do?</p> <p>14 A. It's an online program primarily, and it's six</p> <p>15 courses. And you can work at them or at least at that</p> <p>16 time you could, at your own pace, up to a maximum, I</p> <p>17 believe you had to complete -- excuse me, each section</p> <p>18 within three months from when you started that section.</p> <p>19 But each section, one section dealt with birth injuries,</p> <p>20 birth -- cerebral palsy, different types of --</p> <p>21 developmental delays would be the best thing to say.</p> <p>22 There was a section that dealt with spinal</p> <p>23 cord injury and spinal cord trauma and spinal shock. So</p> <p>24 it had a lot of net involved with it.</p>

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Page 52	<p>1 (Off-the-record reporter clarification.)</p> <p>2 BY THE WITNESS:</p> <p>3 A. It involved a number -- a lot of the types --</p> <p>4 the physiology of an injury, the medical care and</p> <p>5 treatment that a person with that injury would need</p> <p>6 immediately, as well as what long-term care that person</p> <p>7 would more likely than not need. So you could</p> <p>8 understand what caused the injury, for example, on the</p> <p>9 spinal cord, how does someone with a spinal cord injury</p> <p>10 end up paralyzed, what happens physiologically, what do</p> <p>11 you do in the initial period, and then what about for</p> <p>12 the next however many years that person is going to</p> <p>13 live. And that -- I completed my program in six months.</p> <p>14 BY MR. CRANE:</p> <p>15 Q. That was at the requirement to complete it in</p> <p>16 six months?</p> <p>17 A. No. It could be up to a year and a half, I</p> <p>18 think it was.</p> <p>19 Q. Okay. And then you had to -- you had to --</p> <p>20 you had to complete this program in order to be</p> <p>21 certified by the ICHCC. Do I have that right?</p> <p>22 A. Yes. First you completed the program. Then</p> <p>23 you had to prepare a life care plan that would be</p> <p>24 reviewed by your -- by a mentor who is already a</p>	Page 54	<p>1 Q. Okay. And I take it you completed that?</p> <p>2 A. I did.</p> <p>3 Q. In order to complete that 16 credit hours on</p> <p>4 life care planning methodology, what did you have to do?</p> <p>5 How many classes was that? What did that involve?</p> <p>6 A. Well, there was printed materials. There were</p> <p>7 online lectures that you had to attend and watch, and</p> <p>8 then you had to take a test after each subsection within</p> <p>9 each of the six chapters, if you will.</p> <p>10 Q. Okay. Do you have those printed materials any</p> <p>11 longer?</p> <p>12 A. No.</p> <p>13 Q. Do you have any videos or notes from online</p> <p>14 lectures regarding life care planning methodology?</p> <p>15 A. No.</p> <p>16 Q. Okay. Did you have to take a course in</p> <p>17 catastrophic case management or one that's more specific</p> <p>18 within that grouping?</p> <p>19 MR. LEIB: Excuse me. Could I have that back?</p> <p>20 BY MR. CRANE:</p> <p>21 Q. Sure. There's -- did you have to take a</p> <p>22 course in catastrophic case management or something</p> <p>23 within that -- maybe spinal cord injury specific or</p> <p>24 cerebral palsy specific? Was there something like that?</p>
Page 53	<p>1 certified life care planner. And you had to take a test</p> <p>2 and pass with 80 percent to become certified.</p> <p>3 Q. All right. Can I -- can I -- let me break</p> <p>4 that down a little bit because I got a little confused</p> <p>5 in the middle there. So you do the -- the program at</p> <p>6 the University of Florida, the six courses that you</p> <p>7 completed within six months. And once you do that, then</p> <p>8 you're eligible to apply for the ICHCC?</p> <p>9 A. Completing the required -- okay. The pre --</p> <p>10 the requirements to get certified are completing an</p> <p>11 accredited course, having a -- preparing a life care</p> <p>12 plan, which is critiqued and given the stamp of approval</p> <p>13 by a certified life care planner, and passing the</p> <p>14 certification. Then you are certified.</p> <p>15 Q. Okay. Who -- who are you critiqued by on your</p> <p>16 life care plan?</p> <p>17 A. A life care planner that I found through the</p> <p>18 University of Florida program. And don't ask me her</p> <p>19 name. I can't remember.</p> <p>20 Q. I did, but if you don't remember, that's fine.</p> <p>21 All right. When you -- do I have it right</p> <p>22 that you were required to take 16 credit hours of life</p> <p>23 care planning methodology in that Florida program?</p> <p>24 A. Yes.</p>	Page 55	<p>1 MR. LEIB: Object to the form. I think she</p> <p>2 answered that a while back.</p> <p>3 But you can go ahead.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Well, I remember that there was a section on</p> <p>6 spinal cord injuries, and there were lectures from the</p> <p>7 Craig Institute in Denver. So, I mean, they were</p> <p>8 nationally known lecturers. And I remember that there</p> <p>9 was a program for a section on cerebral palsy and the</p> <p>10 issues that faced people with cerebral palsy and how to</p> <p>11 plan for that.</p> <p>12 BY MR. CRANE:</p> <p>13 Q. Was it the Craig Institute? Is that what you</p> <p>14 said?</p> <p>15 A. Yes. C-r-a-i-g.</p> <p>16 Q. And do you consider the Craig Institute to be</p> <p>17 leading authorities in the area of life care planning?</p> <p>18 A. No. They're a leading authority on the issues</p> <p>19 of spinal cord injuries.</p> <p>20 Q. And life can -- life care planning for spinal</p> <p>21 cord injuries or just --</p> <p>22 A. The man- -- the care and treatment of people</p> <p>23 with spinal cord injury. That's --</p> <p>24 Q. And what did --</p>

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Page 56	<p>1 A. Go ahead. I'm sorry.</p> <p>2 Q. Yeah. What is the Craig Institute?</p> <p>3 A. It's a medical facility that specializes in</p> <p>4 the care and treatment of people with spinal cord</p> <p>5 injuries. And they're on the -- in Denver.</p> <p>6 Q. Okay. Thank you.</p> <p>7 The classes that you took at Florida, what</p> <p>8 percentage of them were online?</p> <p>9 A. Almost all. There was also a two-day</p> <p>10 in-person component that was dealing with about how</p> <p>11 to -- how to learn how to testify, but all of the</p> <p>12 substantive issues, materials, information was all</p> <p>13 online.</p> <p>14 Q. So in this course that you took for</p> <p>15 life care planning, they -- they also taught you</p> <p>16 how to testify?</p> <p>17 A. Yes.</p> <p>18 Q. Why would a nurse life care planner need to be</p> <p>19 trained on how to testify?</p> <p>20 MR. LEIB: Object to the form -- object to the</p> <p>21 form of the question.</p> <p>22 You can go ahead.</p> <p>23 BY THE WITNESS:</p> <p>24 A. Testifying is part of being a life care</p>	Page 58	<p>1 BY THE WITNESS:</p> <p>2 A. I don't know that I ever asked an expert how</p> <p>3 they learned that.</p> <p>4 BY MR. CRANE:</p> <p>5 Q. Okay. As you sit here today, can you identify</p> <p>6 a single expert witness that you put on the stand that</p> <p>7 you knew received formal training on how to be an expert</p> <p>8 witness?</p> <p>9 MR. LEIB: Object to the form and foundation.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I know that I heard from friends of mine who</p> <p>12 are defense attorneys that physicians who become experts</p> <p>13 have attended seminars or, I think, classes, whatever</p> <p>14 you want to call it, put on by defense attorneys on how</p> <p>15 to be an effective expert witness.</p> <p>16 Q. Okay. Tell me about that. What -- I've not</p> <p>17 heard that. Tell me -- tell me who told you that and</p> <p>18 where that came from. Is there a specific company that</p> <p>19 does it? Are there firms that do it? Are there</p> <p>20 organizations that do it?</p> <p>21 A. Well, there was a defense attorney that I was</p> <p>22 good friends with by the name of Barbara Zurek,</p> <p>23 Z-u-r-e-k, who tragically died in her sleep about a year</p> <p>24 ago at the --</p>
Page 57	<p>1 planner and just knowing how to conduct yourself and the</p> <p>2 procedures and objections and all of the mechanics of</p> <p>3 testifying. If you've never done it before, you have to</p> <p>4 know how. So that's part of the training that is</p> <p>5 included, at least with the pro- -- the Florida program.</p> <p>6 BY MR. CRANE:</p> <p>7 Q. I take it when you were a practicing lawyer,</p> <p>8 you from time to time would retain expert witnesses?</p> <p>9 A. Yes.</p> <p>10 Q. Can you give me -- well, let me -- let me ask</p> <p>11 it to you this way.</p> <p>12 Have you -- have you put expert witnesses</p> <p>13 on the stand at trial?</p> <p>14 A. Yes.</p> <p>15 Q. How many times?</p> <p>16 A. Well, I think I had over 40 jury trials, so at</p> <p>17 least probably 40 -- or 12. A number of those trials</p> <p>18 were for medical malpractice. So it might have been</p> <p>19 100 and -- 150 as a ballpark.</p> <p>20 Q. In those approximately 150 times in which you</p> <p>21 put an expert on the stand, can you give me an idea as</p> <p>22 to how many times you learned that the expert had</p> <p>23 received training on how to be an expert witness?</p> <p>24 MR. LEIB: Object to the form.</p>	Page 59	<p>1 Q. Sorry to hear.</p> <p>2 A. -- age of 60. She was an excellent trial</p> <p>3 attorney. And she had told me that back in the day --</p> <p>4 I'm not sure if Midwest Medical Insurance Company is</p> <p>5 still in business. That was the self-insured insurance</p> <p>6 company that physicians started in Minnesota to handle</p> <p>7 liability claims and insurance. And MMIC would put on</p> <p>8 seminars for their insured physicians on how to testify,</p> <p>9 not only as an expert, but if they were ever sued. So</p> <p>10 that's one example.</p> <p>11 Q. Okay. Do you have any other examples?</p> <p>12 A. Not that I can think of right now.</p> <p>13 Q. Okay. So back to my original question here,</p> <p>14 and I guess it's before you talked to Barbara Zurek</p> <p>15 about this. Had you personally ever put a witness on</p> <p>16 the stand that you knew had formal training to testify</p> <p>17 as an expert witness?</p> <p>18 MR. LEIB: Object to form and foundation, not</p> <p>19 likely to lead to admissible or discoverable</p> <p>20 information.</p> <p>21 You can go ahead.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I never asked any of my experts if they had</p> <p>24 formal training.</p>

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Page 60	<p>1 BY MR. CRANE:</p> <p>2 Q. If you learned for the first time under</p> <p>3 cross-examination that one of the experts that you put</p> <p>4 on the stand had received formalized training as to how</p> <p>5 to testify as an expert witness, how would that make you</p> <p>6 feel?</p> <p>7 MR. LEIB: Object to the form, foundation, you</p> <p>8 know, beyond the expert- -- beyond the scope of the</p> <p>9 expertise of a life care planner.</p> <p>10 MR. WEIR: Yeah. I object. I don't know how</p> <p>11 this leads to any relevant evidence, so just let me</p> <p>12 have a continuing objection on this line of</p> <p>13 questioning, please.</p> <p>14 MR. CRANE: That's fine.</p> <p>15 MR. WEIR: Thanks.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Frankly, I would be happy that -- that -- I</p> <p>18 mean, I would inquire about what kind of training they</p> <p>19 had. And when I say that I had this two-day program</p> <p>20 about how to testify, it wasn't about what to say. It</p> <p>21 was about waiting until the other attorney stops</p> <p>22 talking, how I'd respond if there's an objection. That</p> <p>23 was the mechanics of testifying. It had nothing to do</p> <p>24 with what you say or how you lay foundation or any</p>	Page 62	<p>1 reframing where we are.</p> <p>2 MR. LEIB: She said 10 to 15, and now you're</p> <p>3 saying at least 15, Ben. You're -- you're not</p> <p>4 stating her testimony properly, but we don't need</p> <p>5 to argue about it. The record -- the -- the</p> <p>6 transcript states accurately what she said.</p> <p>7 MR. CRANE: My notes say and my memory say</p> <p>8 differently. I think it was -- it was before -- it</p> <p>9 was about 10 a year over the course of her career,</p> <p>10 and then over the last three years, she's seen an</p> <p>11 uptick of at least 15 a year, but not as high as</p> <p>12 20.</p> <p>13 BY MR. CRANE:</p> <p>14 Q. Do I have that right, Ms. Kolar?</p> <p>15 A. Some -- yes. It's between 10 -- 10 to 15,</p> <p>16 maybe a little more one year, a little less one year. I</p> <p>17 don't keep track.</p> <p>18 Q. You're -- you're changing a little bit what I</p> <p>19 thought we had agreed on before, so let's -- let me make</p> <p>20 sure that I have this right. My notes and my memory</p> <p>21 tell me that at some point in time, you acknowledged</p> <p>22 that there was an uptick in work that you were receiving</p> <p>23 the last few years, and I thought we established that in</p> <p>24 the last three years, you've written at least 15 life</p>
Page 61	<p>1 substantive training.</p> <p>2 BY MR. CRANE:</p> <p>3 Q. Have you ever marketed your services in any</p> <p>4 way as a life care planner, certified life care planner?</p> <p>5 A. Yes.</p> <p>6 Q. How so?</p> <p>7 A. Yes. When I first started my practice,</p> <p>8 letters to a number of attorneys in Minnesota that I had</p> <p>9 worked with, letting them know that I was now working as</p> <p>10 a life care planner, and that was the extent of it.</p> <p>11 Q. Nothing else?</p> <p>12 A. Nothing else.</p> <p>13 Q. How many letters did you send out?</p> <p>14 A. Twenty.</p> <p>15 Q. Okay. Did anybody respond and hire you?</p> <p>16 A. I've been hired through word of mouth. I</p> <p>17 don't know if any of those letters actually generated --</p> <p>18 my plan worked, but my practice started, and it's been</p> <p>19 growing ever since.</p> <p>20 Q. And, in fact, over the last three years,</p> <p>21 you've seen at least 15 new cases each year?</p> <p>22 A. Yes.</p> <p>23 MR. LEIB: That's been asked and answered.</p> <p>24 MR. CRANE: And that's entire -- I'm just</p>	Page 63	<p>1 care plans each year, but not as high as 20. Am I wrong</p> <p>2 about that now?</p> <p>3 MR. LEIB: Let me just --</p> <p>4 BY THE WITNESS:</p> <p>5 A. You --</p> <p>6 MR. LEIB: -- object.</p> <p>7 Excuse me. The record says whatever the</p> <p>8 record says. This is the problem when questions</p> <p>9 get repeated. You -- you wanted to frame it</p> <p>10 differently, and now we're in a discussion about</p> <p>11 what she said before. Whatever the record said,</p> <p>12 the record said.</p> <p>13 MR. CRANE: I agree with that, but she</p> <p>14 changed -- she seems to be trying to change what</p> <p>15 she said previously.</p> <p>16 BY MR. CRANE:</p> <p>17 Q. So go ahead. Do you want to change what you</p> <p>18 said previously?</p> <p>19 A. I'm not trying to --</p> <p>20 MR. WEIR: Excuse me. I object to the form.</p> <p>21 It's argumentative.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I'm not trying to change my testimony. I'm</p> <p>24 trying to clarify that you were -- I -- I don't know</p>

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Page 65	<p>1 A. I won't say every one, but the majority of</p> <p>2 time, I do download them, and then when the case is</p> <p>3 finished, I delete them.</p> <p>4 Q. Okay. And so the Abdulkaffi case that you</p> <p>5 worked on previously that you told us about, have you</p> <p>6 deleted that file from your hard drive?</p> <p>7 A. I believe that case came to me via paper. And</p> <p>8 I've deleted -- I have destroyed those records.</p> <p>9 Q. Can you -- do you know whether the Abdulkaffi</p> <p>10 case -- whether you have digital information on your</p> <p>11 computer from that case?</p> <p>12 A. I have deleted it.</p> <p>13 Q. When?</p> <p>14 A. Within a month of being told the case has</p> <p>15 settled.</p> <p>16 Q. When was that?</p> <p>17 A. I believe that was last year.</p> <p>18 Q. Was it before or after you were contacted</p> <p>19 regarding this case?</p> <p>20 A. Before.</p> <p>21 Q. How many open files do you have currently?</p> <p>22 A. Twelve.</p> <p>23 Q. How many of them are plaintiff? How many are</p> <p>24 defense?</p>	Page 67	<p>1 Q. So that 12, are those the open ones, and then</p> <p>2 there's others that you're sitting waiting for them,</p> <p>3 waiting to work on them?</p> <p>4 A. No. The 12 includes those that are -- that I</p> <p>5 have been contacted by and I have direct -- I'm waiting</p> <p>6 for the records or I am -- I have the records and I just</p> <p>7 haven't reviewed anything yet.</p> <p>8 Q. Do you have your invoice handy?</p> <p>9 A. From this case?</p> <p>10 Q. Yeah. There's only -- I have one. We marked</p> <p>11 it as 1079. Actually, I can pull it up on the screen.</p> <p>12 A. No. I have it.</p> <p>13 Q. Okay. I'm looking at it right now. And in</p> <p>14 the right-hand corner, top right-hand corner, it</p> <p>15 indicates invoice number 10 -- 235. Do you see that</p> <p>16 there?</p> <p>17 A. Right.</p> <p>18 Q. Okay. How is that number generated?</p> <p>19 A. I started at 150 when I started my practice,</p> <p>20 and as I do cases, I -- or no. Let's see. I started at</p> <p>21 125. And as I do cases, I just add a number. So this</p> <p>22 would be the 110th case -- or the 110th invoice, I</p> <p>23 should say.</p> <p>24 Q. Right. And you told us you've done over a</p>

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Page 68	<p>1 hundred. So that would indicate to me that you would on</p> <p>2 some cases send more than one invoice. Do I have that</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And you started at 125?</p> <p>6 A. Yes.</p> <p>7 Q. Why did you start at 125?</p> <p>8 A. Because I didn't want to start at 1 because</p> <p>9 that would seem like I was brand-new, and I just chose</p> <p>10 125.</p> <p>11 Q. You thought the number of the invoice would</p> <p>12 somehow affect your credibility?</p> <p>13 A. Yes.</p> <p>14 Q. And so you -- you chose to lie about what</p> <p>15 number it was?</p> <p>16 A. It wasn't --</p> <p>17 MR. LEIB: Come on, Ben. Come on.</p> <p>18 (Off-the-record reporter clarification.)</p> <p>19 MR. LEIB: Ask a fair question. Calling her a</p> <p>20 liar is -- is not appropriate.</p> <p>21 MR. CRANE: That's what it was. That's --</p> <p>22 MR. LEIB: No, it's not.</p> <p>23 MR. CRANE: I'm sorry. I'm sorry. From the</p> <p>24 mouth of babies, Sam. I -- I just was being honest</p>	Page 70	<p>1 second.</p> <p>2 Ben, just hold on one second. I'm just</p> <p>3 trying to find the report.</p> <p>4 MR. CRANE: Yeah. Yeah. Let's -- let's just</p> <p>5 take a soft off the record. I just made that up.</p> <p>6 That's the court reporter take -- take a break and</p> <p>7 the videographer stay on.</p> <p>8 MR. LEIB: Okay. I've got it. Thanks.</p> <p>9 MR. CRANE: All right. Good. Good.</p> <p>10 BY MR. CRANE:</p> <p>11 Q. All right. So are you following me,</p> <p>12 Ms. Kolar, option 3? I'm looking at durable -- or I'm</p> <p>13 sorry, at "In Home Care"?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then the more detailed part of</p> <p>16 option 3 begins on page 18 and then it goes to 19. And</p> <p>17 then I guess it -- and correct me if I'm wrong, but it</p> <p>18 ends up at the top third of the page at 21.</p> <p>19 A. I'm pulling that up.</p> <p>20 18 and 19 and 20 is all option 3, and 21.</p> <p>21 Q. But basically the top -- the top half of 21?</p> <p>22 A. Yes.</p> <p>23 Q. You identified this Marklund Wasmond Center as</p> <p>24 one that would be appropriate for C.B. Do I have</p>
Page 69	<p>1 with what I --</p> <p>2 MR. WEIR: It's argumentative. It just as</p> <p>3 easily could have been a reasonable marking tool.</p> <p>4 Knock it off.</p> <p>5 BY THE WITNESS:</p> <p>6 A. To me, it's no different than when you open a</p> <p>7 checking account and start your check numbers at 1000.</p> <p>8 That doesn't mean you already signed 999 checks.</p> <p>9 MR. CRANE: Why don't we -- why don't we take</p> <p>10 a break, and maybe a ten-minute break. Okay?</p> <p>11 MR. LEIB: Okay.</p> <p>12 THE VIDEOGRAPHER: The time -- the time now is</p> <p>13 11:48 a.m. We are off the video record.</p> <p>14 (Recess.)</p> <p>15 THE VIDEOGRAPHER: The time now is 12:04 p.m.</p> <p>16 We are back on the video record.</p> <p>17 BY MR. CRANE:</p> <p>18 Q. All right. Ms. Kolar, I want -- I wanted to</p> <p>19 go through your report a little bit more here, and I'm</p> <p>20 interested in kind of focusing in on option 2 -- no,</p> <p>21 option 3. And in particular -- and that's on page 26 of</p> <p>22 your report.</p> <p>23 I'm looking at --</p> <p>24 MR. LEIB: Ben, I'm sorry. Give me one</p>	Page 71	<p>1 that right?</p> <p>2 A. Yes.</p> <p>3 Q. How far is that facility from Orangeville,</p> <p>4 Illinois?</p> <p>5 A. Ninety miles.</p> <p>6 Q. And so that would be 90 miles each way?</p> <p>7 A. Correct.</p> <p>8 Q. And -- and that 90-mile figure, did you</p> <p>9 actually go and look that up?</p> <p>10 A. I did.</p> <p>11 Q. Did you account anywhere in your plan for --</p> <p>12 for the parents coming to visit C.B. while he's in a</p> <p>13 nursing facility?</p> <p>14 A. You mean in terms of a mileage reimbursement?</p> <p>15 Q. Yes.</p> <p>16 A. No, I did not.</p> <p>17 Q. How about in terms of any -- strike that.</p> <p>18 If -- do you know what C.B. options</p> <p>19 are for utilizing a bus to go to -- to go to school, to</p> <p>20 attend the therapies -- the kids at school?</p> <p>21 A. Now or at Marklund?</p> <p>22 Q. No. Currently.</p> <p>23 A. Currently, mom takes him is my understanding.</p> <p>24 Q. Is that because that there's not a bus</p>

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<p>1 available to take him?</p> <p>2 A. I don't know. That question was not asked in</p> <p>3 her deposition.</p> <p>4 Q. And you didn't interview her, did you?</p> <p>5 A. You wouldn't let me.</p> <p>6 Q. Is that what you were told?</p> <p>7 A. Yes, I was.</p> <p>8 Q. Okay.</p> <p>9 A. Yes.</p> <p>10 Q. Is that what you were told?</p> <p>11 A. I was told that you wanted a list of the</p> <p>12 questions that I wanted to discuss, and I provided those</p> <p>13 to counsel. And then I was told that you refused to let</p> <p>14 me talk with Mrs. -- Ms. Kaiser.</p> <p>15 Q. Did -- was there any indication that I refused</p> <p>16 to answer any questions that you wanted answered?</p> <p>17 A. I wanted to talk with her. I didn't want to</p> <p>18 have you answer the questions. Part of a life care</p> <p>19 plan -- part of a life care plan -- and this is in the</p> <p>20 standard of care -- is to first preferably personally</p> <p>21 meet with the person you're evaluating, see where they</p> <p>22 live, look at their equipment, and just get to know the</p> <p>23 person, as well as in a case involving a child, talk to</p> <p>24 the parents, see how clean the house is, just get a</p>	<p>1 Q. Were you asked to complete some form of work</p> <p>2 within the first week after you were contacted?</p> <p>3 A. No.</p> <p>4 Q. Were you asked to complete a review of the</p> <p>5 materials you were provided within the first week after</p> <p>6 you were contacted?</p> <p>7 A. No.</p> <p>8 Q. All right. Were you told that if you were</p> <p>9 going to accept this assignment, there was a need for a</p> <p>10 week's turnaround time?</p> <p>11 A. No.</p> <p>12 Q. Under the best of circumstances, no pandemic,</p> <p>13 no rush, no whatever, how much time in advance of</p> <p>14 finalizing your report for filing would you prefer to</p> <p>15 have interviewed somebody like Ms. Kaiser when you're</p> <p>16 developing a life care plan?</p> <p>17 A. It's in --</p> <p>18 MR. WEIR: Object --</p> <p>19 MR. LEIB: Object to the form --</p> <p>20 (Simultaneous crosstalk.)</p> <p>21 MR. LEIB: -- and it's an improper</p> <p>22 hypothetical.</p> <p>23 BY THE WITNESS:</p> <p>24 A. My typical process is I get the records. I</p>
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<p>1 sense of if they're an involved, good caregiver, and ask</p> <p>2 a lot of detailed questions that are typically not asked</p> <p>3 in deposition. And that's what I wanted to do. Now,</p> <p>4 with the pandemic, I didn't ask to do an in-person</p> <p>5 visit. But I did want to actually talk with mom on the</p> <p>6 phone.</p> <p>7 MR. LEIB: And just for the record, Ben, this</p> <p>8 is why we had an agreement with Kevin to have it</p> <p>9 recorded, so that Mary Kay Kolar and others, both</p> <p>10 on our side and your side, would have had the</p> <p>11 benefit of the discussions that took place at the</p> <p>12 time of the IME. So that's the record.</p> <p>13 BY MR. CRANE:</p> <p>14 Q. Ms. Kolar, was this an unusual circumstance</p> <p>15 for you when you were retained in this case? Were you</p> <p>16 under a rush to -- to complete your work on it?</p> <p>17 MR. LEIB: Object to the form of the question.</p> <p>18 BY THE WITNESS:</p> <p>19 A. It was a little shorter of a turnaround time</p> <p>20 than I usually have, but I wouldn't call it a rush.</p> <p>21 BY MR. CRANE:</p> <p>22 Q. Okay. Were you asked to prepare your report</p> <p>23 within a week of having first been contacted?</p> <p>24 A. No.</p>	<p>1 review the records so that I'm familiar with what the</p> <p>2 issues are, and then I either meet with or speak with</p> <p>3 the person or family. And so it would have been</p> <p>4 probably within a month of getting the records.</p> <p>5 BY MR. CRANE:</p> <p>6 Q. Okay. And was that time condensed here?</p> <p>7 A. No.</p> <p>8 Q. Okay. What prevented you -- I mean -- strike</p> <p>9 that.</p> <p>10 You're not able to diagnose cerebral</p> <p>11 palsy?</p> <p>12 A. Correct.</p> <p>13 Q. You're not able to treat cerebral palsy?</p> <p>14 A. Well, as you say, I'm not able to order</p> <p>15 treatment or give it. I mean, I could certainly do</p> <p>16 range of motion exercises. I can get the child up. I</p> <p>17 mean, so what's your definition of "treat"?</p> <p>18 Q. Do you currently have permission to practice</p> <p>19 nursing at any facility?</p> <p>20 A. I have -- no, I'm not employed at a facility.</p> <p>21 Q. Right. So you're -- without being able to</p> <p>22 work at a facility of some sort, you cannot practice</p> <p>23 nursing, can you?</p> <p>24 A. That's not true. As long as you're licensed</p>

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<p style="text-align: right;">Page 76</p> <p>1 in the state of Minnesota, I could go and provide</p> <p>2 nursing care tomorrow.</p> <p>3 Q. Under -- under who?</p> <p>4 A. Under my board of nursing license.</p> <p>5 Q. How would -- where would the patient come</p> <p>6 from?</p> <p>7 MR. LEIB: Object to the form of the question,</p> <p>8 and I don't think this is likely to lead to</p> <p>9 admissible or discoverable information.</p> <p>10 Go ahead.</p> <p>11 BY THE WITNESS:</p> <p>12 A. If, for example, a knee broke, they had to</p> <p>13 have surgery and they needed someone to come and provide</p> <p>14 nursing care, my license would allow me to do that. It</p> <p>15 does not need a physician order.</p> <p>16 BY MR. CRANE:</p> <p>17 Q. And you haven't done that in the last</p> <p>18 26 years, true?</p> <p>19 A. True.</p> <p>20 MR. LEIB: Objection. It's been answered.</p> <p>21 BY MR. CRANE:</p> <p>22 Q. But you still believe that you're incapable of</p> <p>23 treating cerebral palsy. Do I have that right?</p> <p>24 MR. LEIB: Objection, asked and answered.</p>	<p style="text-align: right;">Page 78</p> <p>1 exam findings were, fair?</p> <p>2 A. No.</p> <p>3 MR. LEIB: Object to the form of the question.</p> <p>4 It's multiple and overly broad.</p> <p>5 You can go ahead.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I do not need a physician to tell me that a</p> <p>8 blood pressure of 60/40 means the person is in shock.</p> <p>9 So, no, I do not need a physician to tell me -- for me</p> <p>10 to -- for my findings.</p> <p>11 BY MR. CRANE:</p> <p>12 Q. Would your license allow you to treat a person</p> <p>13 for shock?</p> <p>14 A. No. Only certain things, like having</p> <p>15 them lay down, put their feet above their head,</p> <p>16 basic first aid types of things. But in terms of</p> <p>17 treating the cause of the shock, whether that would be</p> <p>18 blood loss or heart failure, a physician would need to</p> <p>19 treat that.</p> <p>20 Q. Right. Did you consult with any treating</p> <p>21 physicians in this case?</p> <p>22 A. No, I did not.</p> <p>23 MR. LEIB: Object to the form and foundation.</p> <p>24 Go ahead.</p>
<p style="text-align: right;">Page 77</p> <p>1 Mis- -- misstates her testimony. Not likely to</p> <p>2 lead to admissible or discoverable information.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I asked you to define what you mean by</p> <p>5 "treat."</p> <p>6 BY MR. CRANE:</p> <p>7 Q. What would it be -- what are you limited by in</p> <p>8 terms of the treatment you're licensed? What is the top</p> <p>9 of your license, do you believe, in terms of treatment?</p> <p>10 A. There are both independent nursing functions</p> <p>11 as well as medically directed nursing functions. RNs,</p> <p>12 as professional nurses, can provide a great deal of</p> <p>13 care, which would include things like bathing, personal</p> <p>14 care, giving exercises, assessing skin integrity,</p> <p>15 deciding or listening if you hear congestion or rales in</p> <p>16 someone's lungs that it would indicate pneumonia,</p> <p>17 looking at their fingers to see if they're -- they're</p> <p>18 blue, see if they have a low oxygen, taking their vital</p> <p>19 signs, doing an overall assessment. Are they in a coma?</p> <p>20 I mean, I could go on and on and on. That's all part of</p> <p>21 RN function.</p> <p>22 Q. Sure. But you would depend -- you would be</p> <p>23 dependent upon a doctor to tell you what the</p> <p>24 significance of vital signs or lab results or physical</p>	<p style="text-align: right;">Page 79</p> <p>1 BY THE WITNESS:</p> <p>2 A. I did review Dr. Ward's deposition.</p> <p>3 THE REPORTER: I'm sorry. I did review what?</p> <p>4 BY THE WITNESS: Dr. Ward, W-a-r-d,</p> <p>5 apostrophe, S, deposition.</p> <p>6 BY MR. CRANE:</p> <p>7 Q. And did Dr. Ward provide any opinion or offer</p> <p>8 any suggestion as to what the appropriate in-home care</p> <p>9 would be for C.B.</p> <p>10 A. No.</p> <p>11 MR. LEIB: Object to the form. It's overly</p> <p>12 broad, and his deposition speaks for itself.</p> <p>13 You can go ahead.</p> <p>14 BY MR. CRANE:</p> <p>15 Q. Did -- did Dr. Simms?</p> <p>16 A. No.</p> <p>17 Q. Did Dr. Yarkony?</p> <p>18 A. Yes.</p> <p>19 Q. Did anyone else, to your knowledge?</p> <p>20 A. Not -- not that I know of.</p> <p>21 Q. Okay. So the only information that you have</p> <p>22 is Dr. Yarkony's medical opinions as to what the</p> <p>23 appropriate in-home medical care would be for C.B.</p> <p>24 Do I have that correct?</p>

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Page 80	<p>1 A. No.</p> <p>2 MR. LEIB: Yeah. This has already been --</p> <p>3 this has already been asked and answered. We</p> <p>4 advised her that there'd be a physician. You have</p> <p>5 Dr. Msall's report. This has already been gone</p> <p>6 over multiple times now at this point, Ben.</p> <p>7 MR. CRANE: Yeah, I just don't -- Sam, I mean,</p> <p>8 let's not -- there's no disclosed opinion, and</p> <p>9 you're telling me there might be a disclosed</p> <p>10 opinion at some point in time.</p> <p>11 MR. LEIB: No. There is a disclosed opinion.</p> <p>12 There is a disclosed opinion.</p> <p>13 MR. CRANE: From Msall?</p> <p>14 MR. LEIB: Dr. Msall's supplemental report was</p> <p>15 sent to you over the weekend. You have it.</p> <p>16 MR. CRANE: I have --</p> <p>17 MR. LEIB: You've reviewed it.</p> <p>18 MR. CRANE: She has?</p> <p>19 BY MR. CRANE:</p> <p>20 Q. Have you seen --</p> <p>21 MR. LEIB: I'm sorry.</p> <p>22 BY MR. CRANE:</p> <p>23 Q. Nurse Kolar, have you seen Dr. -- Nurse Kolar,</p> <p>24 have you seen Dr. Msall's report?</p>	Page 82	<p>1 MR. CRANE: No, I don't, because I -- I had no</p> <p>2 idea you were going to supplement Msall who you</p> <p>3 disclosed like two months ago having no opinions</p> <p>4 whatsoever about future care in terms of the</p> <p>5 appropriateness of the life care plan.</p> <p>6 Honest to God, the first time -- you know,</p> <p>7 Kevin was going to do Msall, so I didn't even look</p> <p>8 at it. And so the first time hearing -- let me</p> <p>9 finish, Sam. The first I'm hearing about Dr. Msall</p> <p>10 having any opinions regarding this life care plan</p> <p>11 is what you told me, Sam, about a minute and a half</p> <p>12 ago. And when this was brought up at the beginning</p> <p>13 of the deposition, nobody said anything about</p> <p>14 Dr. Msall having these opinions.</p> <p>15 MR. LEIB: Well, it doesn't matter if she's</p> <p>16 seen Dr. Msall's report or not. You know she</p> <p>17 talked to us on the phone. We told her there's a</p> <p>18 defense position that's reviewed it. It really</p> <p>19 doesn't matter. We sent the report, too, and</p> <p>20 I'm -- you know, I understand there's so many</p> <p>21 volume on this stuff. You didn't see it, and --</p> <p>22 and Kevin is going to do it, and that's fine.</p> <p>23 But you know we just got the UW records</p> <p>24 last week. These other things that he's reviewed,</p>
Page 81	<p>1 A. No, I --</p> <p>2 THE REPORTER: Dr. whose report?</p> <p>3 BY MR. CRANE:</p> <p>4 Q. Dr. Msall, M-s-a-l-l?</p> <p>5 A. M-a-s-a-l-l [sic].</p> <p>6 I have not seen it. I have been told that</p> <p>7 it's coming.</p> <p>8 Q. You have not reviewed it?</p> <p>9 A. No.</p> <p>10 Q. It forms none of the foundation for your</p> <p>11 opinions?</p> <p>12 MR. LEIB: That's -- object to the form of</p> <p>13 the -- object to the form of the question and --</p> <p>14 and foundation. It doesn't matter if she's seen it</p> <p>15 or not.</p> <p>16 MR. CRANE: It absolutely does.</p> <p>17 MR. LEIB: You already asked the question,</p> <p>18 Ben. You know that she hasn't reviewed it, so...</p> <p>19 MR. CRANE: You're just -- you're just</p> <p>20 coaching now.</p> <p>21 MR. LEIB: No, I'm not. You're asking</p> <p>22 the same questions over. You have Msall's</p> <p>23 report. You know what he says in it, and it</p> <p>24 doesn't --</p>	Page 83	<p>1 it's all itemized in what we sent through, you</p> <p>2 know, so -- but -- but regardless of all of that,</p> <p>3 you've asked her about it. She -- she has reviewed</p> <p>4 whatever she's reviewed, and that's it. You don't</p> <p>5 have to keep asking her about it.</p> <p>6 BY MR. CRANE:</p> <p>7 Q. Does Dr. Msall's supplemental amendment that</p> <p>8 you haven't seen yet form any foundation whatsoever for</p> <p>9 your opinions?</p> <p>10 MR. LEIB: How would she know that? She</p> <p>11 hasn't reviewed it. Objection.</p> <p>12 MR. CRANE: You're interrupting to coach, Sam.</p> <p>13 That's totally improper.</p> <p>14 MR. LEIB: No. This is argumentative. How</p> <p>15 can you ask her a question about something she</p> <p>16 hasn't reviewed? She -- she didn't review it, so</p> <p>17 now you're asking her to give an opinion whether</p> <p>18 something she hasn't reviewed laid the foundation</p> <p>19 for her opinions. And, first of all, the</p> <p>20 foundation is not for the witness to decide. But,</p> <p>21 secondly, she hasn't reviewed it, so --</p> <p>22 MR. CRANE: All right. Let me -- let me ask</p> <p>23 it again, and she can answer it over your</p> <p>24 objection.</p>

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Page 84	<p>1 BY MR. CRANE:</p> <p>2 Q. You're not relying upon Dr. Msall's</p> <p>3 supplemental report for your opinions in this case, are</p> <p>4 you?</p> <p>5 A. Let me give you -- let me explain something,</p> <p>6 Mr. Crane.</p> <p>7 Q. I don't want an explanation. I want an answer</p> <p>8 to the question I asked.</p> <p>9 A. At this point -- at this point, I do not know</p> <p>10 which defense expert will lay foundation on or for some</p> <p>11 of the parts of my care plan.</p> <p>12 Q. Okay. You are not relying upon Dr. Msall's</p> <p>13 supplemental report for the foundation for your</p> <p>14 opinions, true?</p> <p>15 A. I can't answer that question because I want to</p> <p>16 explain how it works with my care plan.</p> <p>17 MR. LEIB: Go ahead.</p> <p>18 BY THE WITNESS:</p> <p>19 A. Okay. I write a care plan based on my review</p> <p>20 of all the records, what's going on with the person up</p> <p>21 until the point of my care plan, and then I send it to</p> <p>22 whoever retained me. They then send my care plan to an</p> <p>23 expert for review, to say, is this appropriate? Do you</p> <p>24 agree with this? So I don't ask a doctor in advance,</p>	Page 86	<p>1 to rely upon Dr. Msall for your opinions in this case;</p> <p>2 is that true?</p> <p>3 A. I don't know which physician I'm relying on.</p> <p>4 I recognize that there needs to be medical foundation</p> <p>5 for some of the opinions in my report. Who that person</p> <p>6 will be, it could be Dr. Gilles; it could be Dr. Msall;</p> <p>7 it could be someone else. I don't know that yet because</p> <p>8 I have not been told who has approved or agreed to my</p> <p>9 care plan.</p> <p>10 Q. My question really is different. There's --</p> <p>11 there's two parts to this. There's a before and an</p> <p>12 after. Okay? There's the after, which is after you</p> <p>13 created the life care plan, getting a blessing from an</p> <p>14 M.D. saying it's appropriate. There's a before where</p> <p>15 you don't have the foundation to say how long this child</p> <p>16 is going to live and some of the other things. So on</p> <p>17 one end, you're relying upon their opinions. On the</p> <p>18 other end, they're relying upon your opinions and</p> <p>19 blessing them and saying this is an appropriate care</p> <p>20 plan. So let me start over.</p> <p>21 MR. LEIB: Well, let me just object -- let me</p> <p>22 just object to the speech, Ben. Go ahead and ask a</p> <p>23 question.</p> <p>24 MR. CRANE: I'm trying to. There -- there</p>
Page 85	<p>1 what do you think I should put in my care plan? That's</p> <p>2 for me to decide based on my education and experience.</p> <p>3 So within my care plan is my opinions.</p> <p>4 Whether they have been adopted or approved, I don't</p> <p>5 know. I assume they will be, or if someone says, I</p> <p>6 don't agree with this; you need to do -- he needs this,</p> <p>7 this, and this, then I would change my care plan to</p> <p>8 follow the physician's recommendations.</p> <p>9 BY MR. CRANE:</p> <p>10 Q. So are you relying upon Dr. Msall's</p> <p>11 supplemental report for any of your opinions in this</p> <p>12 case?</p> <p>13 MR. LEIB: Object to the form of the question.</p> <p>14 It's been asked and answered.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I don't know.</p> <p>17 (Off-the-record reporter clarification.)</p> <p>18 BY THE WITNESS:</p> <p>19 A. No, I don't k-n-o-w.</p> <p>20 BY MR. CRANE:</p> <p>21 Q. All right. When you wrote your report and</p> <p>22 signed it, the one that was filed with the federal</p> <p>23 court, it -- it wasn't your intent at that point in time</p> <p>24 on -- that you finalized your report on June 15, 2020,</p>	Page 87	<p>1 seems to be confusion about her role here, and I'm</p> <p>2 trying to -- maybe I'm wrong.</p> <p>3 BY MR. CRANE:</p> <p>4 Q. But do you -- and I'm starting over here.</p> <p>5 In drafting your opinions and drafting the</p> <p>6 life care plan of C.B. which you filed in</p> <p>7 federal court, which was filed in federal court and you</p> <p>8 signed, you do not in any way, shape, or form rely upon</p> <p>9 the supplemental report of Dr. Msall or anything</p> <p>10 regarding Dr. Msall, true?</p> <p>11 MR. LEIB: That's been asked and answered.</p> <p>12 You can go ahead.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Not -- at the time I signed my report, I was</p> <p>15 not relying on the foundation of any physician.</p> <p>16 BY MR. CRANE:</p> <p>17 Q. At all?</p> <p>18 A. Other than his current records and what he</p> <p>19 has -- what's been -- what's gone on with -- board or</p> <p>20 his medication, his medical treatment. So, yes, I</p> <p>21 relied on the physician -- his treating physicians. But</p> <p>22 in terms of his in-home care or his care needs, based on</p> <p>23 my experience, education, and training, and what he is</p> <p>24 getting right now in terms of in-home care and has been</p>

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<p style="text-align: right;">Page 88</p> <p>1 since birth, what's in the care plan is what I think is</p> <p>2 appropriate.</p> <p>3 Q. Was it your decision and your decision alone</p> <p>4 to make the determination that at age 13, it would be</p> <p>5 appropriate for [C.B.] to go into a nursing facility?</p> <p>6 A. I didn't --</p> <p>7 MR. LEIB: Foundation. Hearsay.</p> <p>8 You can go ahead. Just pause just a</p> <p>9 second so we can get objections in.</p> <p>10 That's been asked and answered.</p> <p>11 You can go ahead.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I am not making a decision because there's</p> <p>14 three options in my care plan. I'm giving the pricing</p> <p>15 for different types of care. He could go at -- into</p> <p>16 Marklund next week. But a lot of times, in my</p> <p>17 experience with dealing with families with brain-injured</p> <p>18 babies -- and I handled a number of these cases as an</p> <p>19 attorney, as a plaintiff's attorney -- is when the child</p> <p>20 reaches 12 or 13, that they've gotten so big that it's</p> <p>21 hard physically to continue to care for them. So I just</p> <p>22 chose that as a number of a reasonable time when [C.B.]</p> <p>23 might and his family might want him to move into a</p> <p>24 facility. I didn't --</p>	<p style="text-align: right;">Page 90</p> <p>1 A. I don't know. That's up to the family.</p> <p>2 Q. Okay. And the same would be true for option 2</p> <p>3 and option 3? You're not able to offer an opinion more</p> <p>4 likely than not as to what is to occur?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And is there a likelihood that [C.B.]</p> <p>7 lives beyond 33 years?</p> <p>8 A. That's --</p> <p>9 MR. LEIB: Object to the form, beyond the</p> <p>10 expertise of the witness.</p> <p>11 You can go ahead.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I am not qualified to give an opinion on life</p> <p>14 expectancy, so I defer to answer that.</p> <p>15 BY MR. CRANE:</p> <p>16 Q. Sure. But is the -- did you ask anybody?</p> <p>17 A. Dr. Simms.</p> <p>18 Q. Yeah. What did he tell you? What's the</p> <p>19 likelihood that the child is going to live past 33?</p> <p>20 A. We didn't discuss that. He said in his</p> <p>21 opinion, [C.B.] has a life expectancy of 33. I didn't</p> <p>22 get into details of the likelihood he'll live to 34.</p> <p>23 Q. Do you have a definition of life expectancy</p> <p>24 that you understand to be reasonably accepted by life</p>
<p style="text-align: right;">Page 89</p> <p>1 BY MR. CRANE:</p> <p>2 Q. Is 13 -- is 13 or 14 a less reasonable time</p> <p>3 for him to move into a facility?</p> <p>4 A. Is it what?</p> <p>5 Q. I'm sorry. Here, let me ask it again.</p> <p>6 What -- what makes 13 reasonable and not</p> <p>7 12 or not 14?</p> <p>8 A. It's just an arbitrary number. That's when he</p> <p>9 becomes a teenager. He could go when he's 10. He could</p> <p>10 go when he's 15. I just had to pick a number, and so I</p> <p>11 chose 13.</p> <p>12 Q. And that's not based on an M.D. opinion, true?</p> <p>13 A. True.</p> <p>14 MR. LEIB: That's been asked and answered.</p> <p>15 BY MR. CRANE:</p> <p>16 Q. Your life care plan stopped at age 33?</p> <p>17 A. Yes.</p> <p>18 Q. What's the likelihood -- well, let me ask this</p> <p>19 first. Of the three plans, is there one that's more</p> <p>20 likely than other to -- than the others to occur?</p> <p>21 A. I don't know.</p> <p>22 Q. And you're not able to offer an opinion as to</p> <p>23 more probably true than not true, number one would</p> <p>24 occur?</p>	<p style="text-align: right;">Page 91</p> <p>1 care planners?</p> <p>2 A. It's the age at which the person is likely to</p> <p>3 live to.</p> <p>4 Q. Okay. And 50 percent of those people live</p> <p>5 longer; 50 percent of those people live less?</p> <p>6 A. True.</p> <p>7 Q. Okay. You didn't consider, did you, the</p> <p>8 50 percent possibility that [C.B.] would outlive</p> <p>9 33 years, did you?</p> <p>10 MR. LEIB: Object to the form of the question.</p> <p>11 It's argumentative.</p> <p>12 You can go ahead.</p> <p>13 BY THE WITNESS:</p> <p>14 A. In formulating a life care plan, you have to</p> <p>15 use an end point. And the end point that I used is up</p> <p>16 to the jury to decide the likelihood that he'll live</p> <p>17 less or more than to age 33.</p> <p>18 BY MR. CRANE:</p> <p>19 Q. Right. But if they make -- if they reach the</p> <p>20 conclusion that, hey, that he's going to live to 50,</p> <p>21 your life care plan would provide them no direction</p> <p>22 whatsoever as to what moneys would be necessary from age</p> <p>23 33 to 50? Do I have that correct?</p> <p>24 MR. LEIB: Yeah, no, you don't. The economist</p>

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Page 92	<p>1 has issued a report. You have that report. And</p> <p>2 the -- you know the life care plan provides the</p> <p>3 life care, the three options, and then the</p> <p>4 economist turns it into the -- into the present</p> <p>5 value aspect. This is not within the gamut of the</p> <p>6 life care planner. Life expectancy is not within</p> <p>7 the gamut of the life care planner.</p> <p>8 Ben, I'm objecting to this whole line of</p> <p>9 questioning because this is not appropriate for</p> <p>10 either this witness and it's -- it's abusive to her</p> <p>11 because you're asking her questions that are</p> <p>12 blatantly not within the appropriate questions of a</p> <p>13 life care planner. So, you know, I'm not telling</p> <p>14 her not to answer the question, but at some point,</p> <p>15 we -- we'd have to call Judge Magistrate Crocker</p> <p>16 and talk about this because this is endless.</p> <p>17 BY MR. CRANE:</p> <p>18 Q. Did Dr. Simms let you know that he believed</p> <p>19 that there was still a possibility that the child would</p> <p>20 live past 33?</p> <p>21 A. We didn't discuss that.</p> <p>22 Q. If he held that opinion, is that something</p> <p>23 that you would like to know?</p> <p>24 A. If he said it's more likely than not that</p>	Page 94	<p>1 successfully resolve any of them for the -- the injured</p> <p>2 party?</p> <p>3 A. Yes.</p> <p>4 Q. How many of those ten?</p> <p>5 A. Three went to trial with a plaintiff's</p> <p>6 verdict, and the other seven settled.</p> <p>7 Q. So three plaintiff's verdicts and seven</p> <p>8 settlements?</p> <p>9 A. Correct.</p> <p>10 Q. Ten for ten.</p> <p>11 A. Right.</p> <p>12 Q. Okay. What were the verdicts?</p> <p>13 A. One --</p> <p>14 MR. LEIB: This is -- wait a minute. This is</p> <p>15 not likely to lead to admissible and discoverable</p> <p>16 information. It's irrelevant. Can -- can you</p> <p>17 provide the relevance of this, Ben, for that -- why</p> <p>18 it's discoverable, what her results were as an</p> <p>19 attorney in these brain damage baby cases?</p> <p>20 MR. CRANE: You can make your objection. I'm</p> <p>21 asking the questions.</p> <p>22 MR. LEIB: Well, I know, but at some point</p> <p>23 we've got to get the magistrate on the phone to get</p> <p>24 an input. These are so improper that I don't</p>
Page 93	<p>1 he'll live beyond age 33, yes. And if I can go back one</p> <p>2 question, when you said my life care plan doesn't</p> <p>3 provide any guidance if he lives beyond age 33, in the</p> <p>4 total -- the -- the three graphs or the three totals at</p> <p>5 the end, that assumes age 33.</p> <p>6 But within the body of my care plan, I</p> <p>7 have annual costs for every piece of thing -- everything</p> <p>8 that's in this care plan. So if the jury is given those</p> <p>9 annual costs, they could easily calculate what another</p> <p>10 17 years would -- would result in terms of a dollar</p> <p>11 figure.</p> <p>12 Q. And so at trial, are you going to explain to</p> <p>13 them that -- strike that.</p> <p>14 Let's bounce over to your CV.</p> <p>15 Oh, I know what I wanted to ask. You</p> <p>16 mentioned that you -- as a plaintiff's attorney, you</p> <p>17 handled labor and delivery brain-damaged baby cases?</p> <p>18 A. I did.</p> <p>19 Q. How many?</p> <p>20 A. Ten.</p> <p>21 Q. And were they all of the hypoxic ischemic</p> <p>22 encephalopathy variety?</p> <p>23 A. Yes.</p> <p>24 Q. And of those ten, were you able to</p>	Page 95	<p>1 understand --</p> <p>2 MR. CRANE: Why?</p> <p>3 MR. LEIB: -- why you're --</p> <p>4 MR. CRANE: Sam, you hired a plaintiff's</p> <p>5 attorney for your life care planner. You didn't</p> <p>6 expect me to ask these questions?</p> <p>7 MR. LEIB: You've asked --</p> <p>8 MR. CRANE: Every -- every time. I can't</p> <p>9 imagine it's not every single time.</p> <p>10 MR. LEIB: You're asking her what the results</p> <p>11 were in cases she litigated when she practiced as</p> <p>12 an attorney.</p> <p>13 MR. CRANE: Yeah. And I'm going to go look up</p> <p>14 those cases and see the life care plans and see how</p> <p>15 they got such big verdicts and see where her life</p> <p>16 care plans are different, so that's what I'm</p> <p>17 searching for. And that is --</p> <p>18 MR. WEIR: And that will be relevant at some</p> <p>19 point in time?</p> <p>20 MR. CRANE: Yes.</p> <p>21 MR. WEIR: Seriously.</p> <p>22 And some of these settlements might be</p> <p>23 confidential in terms of the amount.</p> <p>24 MR. CRANE: I'm sure she'll let us know.</p>

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Page 96	<p>1 She's a licensed attorney. She knows when she can</p> <p>2 open her mouth and not.</p> <p>3 MR. WEIR: Well, she shouldn't have to open</p> <p>4 her mouth on these irrelevant issues, but go ahead.</p> <p>5 Waste our time.</p> <p>6 BY MR. CRANE:</p> <p>7 Q. What are the three verdicts?</p> <p>8 A. The largest was 2.5 million.</p> <p>9 Q. Okay.</p> <p>10 A. And that was in -- I'm trying to remember the</p> <p>11 county. I think it was Brainerd. And at the time, that</p> <p>12 was the largest plaintiff's malpractice verdict in that</p> <p>13 county. The other one were 1.1 million. That was,</p> <p>14 like, 28 years ago. That was in Olmsted County. And</p> <p>15 the final one was, like, 1.4 million. But they weren't,</p> <p>16 like, huge verdicts, like --</p> <p>17 Q. Okay.</p> <p>18 (Off-the-record reporter clarification.)</p> <p>19 BY THE WITNESS:</p> <p>20 A. I said they weren't huge verdicts.</p> <p>21 BY MR. CRANE:</p> <p>22 Q. Did each one of those cases have a life care</p> <p>23 plan?</p> <p>24 A. Yes.</p>	Page 98	<p>1 under practice includes arbitration of no-fault disputed</p> <p>2 claims. We talked about that before, right?</p> <p>3 A. Right.</p> <p>4 Q. And then it says, "consultation with elder law</p> <p>5 attorneys to assist individuals with life care planning</p> <p>6 needs." Are you still doing that?</p> <p>7 A. No.</p> <p>8 Q. Okay.</p> <p>9 MR. LEIB: I -- excuse me, Ben. I don't have</p> <p>10 anything on my screen.</p> <p>11 MR. CRANE: Oh, you don't?</p> <p>12 MR. LEIB: No.</p> <p>13 MR. CRANE: I mean --</p> <p>14 MR. LEIB: It says, "Ben Crane has started</p> <p>15 screen sharing," but there's nothing there. Do I</p> <p>16 have to work on anything or --</p> <p>17 MR. CRANE: Here, let me stop and I'll</p> <p>18 re-share.</p> <p>19 BY MR. CRANE:</p> <p>20 Q. Ms. Kolar, did you -- were you seeing that?</p> <p>21 A. Yes.</p> <p>22 Q. It seemed like you were. Okay.</p> <p>23 MR. LEIB: Yeah, I see everybody. I just</p> <p>24 don't see the document you're referring.</p>
Page 97	<p>1 Q. And who did you use as a life care planner?</p> <p>2 A. Linda Graham, G-r-a-h-a-m.</p> <p>3 Q. Okay. And then in the seven settlements, did</p> <p>4 you use Ms. Graham for those as well?</p> <p>5 A. For some of them.</p> <p>6 Q. Who else did you use besides Ms. Graham in</p> <p>7 those seven settlements?</p> <p>8 A. I didn't use care -- or have care plans on all</p> <p>9 of them because some of them, the liability wasn't</p> <p>10 strong, and we knew the case -- that the child had a</p> <p>11 very short life expectancy.</p> <p>12 Q. And in settling those cases, life expectancy</p> <p>13 was something that you considered?</p> <p>14 A. Of course.</p> <p>15 Q. Of those settlements, what was the largest?</p> <p>16 A. Those are all confidential, and I can't</p> <p>17 disclose that.</p> <p>18 Q. Each one of them is confidential?</p> <p>19 A. Yes.</p> <p>20 (Exhibit No. 1078 referenced.)</p> <p>21 BY MR. CRANE:</p> <p>22 Q. Okay. Looking -- I've got -- I'm not sure.</p> <p>23 Looking at your CV, 1078, under the section about</p> <p>24 qualified neutral, KolarLaw, LLC, qualified neutral</p>	Page 99	<p>1 MR. CRANE: How about now?</p> <p>2 MR. LEIB: No. I have writing that says, "Ben</p> <p>3 Crane has started screen share." That's -- does</p> <p>4 anybody else see it on their screen?</p> <p>5 THE WITNESS: I see it.</p> <p>6 MR. LEIB: Okay. Well, here.</p> <p>7 MR. CRANE: I'm -- I'm just reading from her</p> <p>8 CV, Exhibit 1078 that we sent around.</p> <p>9 MR. LEIB: Yeah. As long as -- as long as --</p> <p>10 as long as she can see it, just go ahead.</p> <p>11 THE VIDEOGRAPHER: I'll tell you it's also on</p> <p>12 the screen, and it will be in the recording.</p> <p>13 MR. CRANE: Great.</p> <p>14 BY MR. CRANE:</p> <p>15 Q. So the portion of your CV under your law</p> <p>16 practice, we should take out, "consultation with elder</p> <p>17 law attorneys to assist individuals with life care</p> <p>18 planning needs"?</p> <p>19 A. To make it accurate, yes.</p> <p>20 Q. Okay.</p> <p>21 A. I haven't done that in -- I'm just no longer</p> <p>22 doing that.</p> <p>23 Q. When did you stop doing it?</p> <p>24 A. About two years ago.</p>

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<p>1 Q. Did you ever deliver any babies?</p> <p>2 A. I -- no.</p> <p>3 Q. All right. Looking at page 4 of your CV under</p> <p>4 "Seminars Attended," it looks like both of these</p> <p>5 seminars were put on by the International Symposium of</p> <p>6 Life Care Planners. Do you see that there?</p> <p>7 A. Yes.</p> <p>8 Q. You went to a seminar in 2013 in Atlanta and</p> <p>9 one in Scottsdale, Arizona, in 2015?</p> <p>10 A. Correct.</p> <p>11 Q. Do you consider the International Symposium of</p> <p>12 Life Care Planners to be an authority in the area of</p> <p>13 life care planning?</p> <p>14 A. Yes.</p> <p>15 MR. LEIB: Object to the form. It's overly</p> <p>16 broad.</p> <p>17 You can go ahead.</p> <p>18 BY MR. CRANE:</p> <p>19 Q. Okay. And when you went to -- strike that.</p> <p>20 These two seminars, they form at least</p> <p>21 some basis for your professional experience and then the</p> <p>22 opinions you're rendering here?</p> <p>23 A. Yes.</p> <p>24 Q. I guess that same would be true for</p>	<p>1 BY MR. CRANE:</p> <p>2 Q. Other than the -- a personal interview with</p> <p>3 Cortney Kaiser, is there any other work that you still</p> <p>4 would like to do on this case or would have liked to do</p> <p>5 on this case?</p> <p>6 A. No.</p> <p>7 Q. Did you rely upon Dr. Gilles's opinions in any</p> <p>8 way for your opinions on this case?</p> <p>9 A. No.</p> <p>10 Q. Have you been involved as -- I know we talked</p> <p>11 about as a life care planner, but as either a lawyer or</p> <p>12 as a nurse in a litigated matter involving either</p> <p>13 Mr. Weir or Mr. Leib's firm?</p> <p>14 A. No.</p> <p>15 Q. Have you given any presentations to groups of</p> <p>16 lawyers?</p> <p>17 A. Yes.</p> <p>18 Q. As a life care planner?</p> <p>19 A. Yes.</p> <p>20 Q. What presentations have you given to groups of</p> <p>21 lawyers as a life care planner?</p> <p>22 A. It's on my CV. Let's see. Four.</p> <p>23 Q. I'm sorry. You broke up there.</p> <p>24 A. It's on my CV on page 4.</p>
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<p>1 the -- that symposium that you attended in June</p> <p>2 of 2017?</p> <p>3 A. Yes, although the seminar -- or the symposium</p> <p>4 in June of 2017 was more geared towards --</p> <p>5 (Audio distortion.)</p> <p>6 (Off-the-record reporter clarification.)</p> <p>7 BY THE WITNESS:</p> <p>8 A. Okay. The symposium was more geared to an</p> <p>9 internal type --</p> <p>10 (Audio distortion.)</p> <p>11 (Off-the-record reporter clarification.)</p> <p>12 BY THE WITNESS:</p> <p>13 A. That was geared more towards discussing the</p> <p>14 policy that the International Symposium of Life Care</p> <p>15 Planners would develop on certain things and also</p> <p>16 dealing with cost issues, ethics of life care planning.</p> <p>17 That wasn't substantive in terms of medical experts like</p> <p>18 the other one.</p> <p>19 (Off-the-record reporter clarification.)</p> <p>20 (The record was read as requested.)</p> <p>21 BY THE WITNESS:</p> <p>22 A. In terms of experts giving lectures as the</p> <p>23 2013 and 2015 involved.</p> <p>24 (Short pause.)</p>	<p>1 Q. Okay.</p> <p>2 A. I spoke at a joint seminar sponsored jointly</p> <p>3 by the Minnesota Association for Justice and Minnesota</p> <p>4 Defense Lawyers in April of 2010 -- oh, as a life care</p> <p>5 planner, it was in April of 2013. I have spoke to the</p> <p>6 same type -- same seminar, a joint seminar sponsored by</p> <p>7 what was MTLA at the time and then --</p> <p>8 (Audio distortion.)</p> <p>9 (Off-the-record reporter clarification.)</p> <p>10 BY THE WITNESS:</p> <p>11 A. -- MT, as in Tom, LA and Minnesota Defense</p> <p>12 Lawyers in April of 2013 about when to retain and how to</p> <p>13 maximize opinions of life care planners.</p> <p>14 MR. LEIB: You're -- this is Sam Leib. You're</p> <p>15 kind of cutting in and out, but what -- what you</p> <p>16 just mentioned, is that all on your CV? Can I just</p> <p>17 read it on your CV?</p> <p>18 THE WITNESS: Yes. It's on page 4.</p> <p>19 MR. LEIB: Okay. That's fine.</p> <p>20 MR. CRANE: It's on the screen right now.</p> <p>21 (Off-the-record reporter clarification.)</p> <p>22 MR. CRANE: Yeah, it's on the screen right</p> <p>23 now, isn't it?</p> <p>24 MR. LEIB: I have nothing on my screen. I --</p>

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<p style="text-align: right;">Page 104</p> <p>1 I haven't -- apparently, you've got the CV, but</p> <p>2 that's fine. I just -- as long as I know it's on</p> <p>3 the CV and I can read it later, I'll just do that.</p> <p>4 BY MR. CRANE:</p> <p>5 Q. All right. The first item, it says invited</p> <p>6 lecturer at numerous hospitals to present seminars to</p> <p>7 registered nurses on how to avoid being sued for</p> <p>8 professional negligence, 1995 through 2005. I take it</p> <p>9 that was one -- more than one presentation?</p> <p>10 A. Yes.</p> <p>11 Q. How many -- how many hospitals, how many</p> <p>12 seminars did you present to registered nurses in that</p> <p>13 ten-year period?</p> <p>14 A. Probably 10 to 15.</p> <p>15 Q. Was it through some organization?</p> <p>16 A. No. It was -- people would just hear about me</p> <p>17 and I would get a call from a hospital, usually their</p> <p>18 risk management people, and they would ask me to come</p> <p>19 and give a lecture, and I would do that. It took about</p> <p>20 two hours maximum.</p> <p>21 Q. Okay. And would this two-hour lecture --</p> <p>22 would you give a similar form of the same lecture</p> <p>23 multiple times?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 106</p> <p>1 area or in Minnesota?</p> <p>2 A. They were all in Minnesota, but not all -- not</p> <p>3 all in the Twin Cities.</p> <p>4 Q. It looks like you were involved in writing a</p> <p>5 chapter on -- in Minnesota practice on medical</p> <p>6 malpractice?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have a copy of that book?</p> <p>9 A. I think I do. It's packed away somewhere.</p> <p>10 Q. Since -- now I've got on the screen</p> <p>11 Exhibit 1079, your -- the invoice that we've been</p> <p>12 provided. Can you give me an estimate from -- from</p> <p>13 May 6th until the current as to how many hours you</p> <p>14 expect to bill for your time up until now?</p> <p>15 A. I've spent another two hours yesterday</p> <p>16 reviewing things and then the testimony today.</p> <p>17 Q. Is that all the time that you're going to -- I</p> <p>18 mean, here, I want to be fair to you because there's</p> <p>19 another month in between and you had a conversation with</p> <p>20 Dr. Simms at some point in the first two weeks. You</p> <p>21 finalized your report. Are you --</p> <p>22 MR. LEIB: Well --</p> <p>23 MR. CRANE: I'm going to try to be fair to</p> <p>24 her. I mean, she -- she said she was going to have</p>
<p style="text-align: right;">Page 105</p> <p>1 Q. Can you give me a sense of what the topics</p> <p>2 discussed in this -- these lectures was?</p> <p>3 A. It was sort of a primer on when people -- when</p> <p>4 health-care providers get sued, what are the theories,</p> <p>5 and we would talk about what negligence was, what the</p> <p>6 definition of negligence was, and how that would get</p> <p>7 proven or try to be proven in a trial. We talked about</p> <p>8 whether they should have their own malpractice insurance</p> <p>9 versus relying on the insurance provided by the</p> <p>10 employer.</p> <p>11 We talked about how frequently nurses get</p> <p>12 individually named versus the hospital being named,</p> <p>13 things like that.</p> <p>14 Q. And would you say that you gave that lecture</p> <p>15 or something along those lines more than 15 times?</p> <p>16 A. No.</p> <p>17 Q. Somewhere between 10 and 15?</p> <p>18 A. Right.</p> <p>19 Q. Was -- was it a once a year thing?</p> <p>20 A. There might be two in one year and none in the</p> <p>21 next. It just depended on when I would get asked.</p> <p>22 Q. Were there other presenters at these seminars?</p> <p>23 A. No.</p> <p>24 Q. And were all the hospitals in the Twin Cities</p>	<p style="text-align: right;">Page 107</p> <p>1 two more hours, and I just don't think that</p> <p>2 that's -- I don't think she thought that answer</p> <p>3 through because --</p> <p>4 BY THE WITNESS:</p> <p>5 A. I --</p> <p>6 BY MR. CRANE:</p> <p>7 Q. Go ahead.</p> <p>8 A. I'm sorry. Some of the dates on that invoice</p> <p>9 are wrong. The drafting of the care plan, that was</p> <p>10 actually finalized the first week of June. For some of</p> <p>11 those dates from April should actually be more in May</p> <p>12 and June. And the deposition prep, that should have</p> <p>13 been yesterday. I'm not sure how those dates got</p> <p>14 screwed up, but they're -- the dates are wrong. What's</p> <p>15 on here is correct as of -- or through yesterday. Just</p> <p>16 the dates are wrong.</p> <p>17 Q. So the initial dates, I mean, is it that --</p> <p>18 here, let's take "Draft care plan," for instance. Is it</p> <p>19 that you started drafting the care plan April 25th and</p> <p>20 you completed it at some point in the first couple weeks</p> <p>21 of June?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 A. And the thing with the record review, I didn't</p>

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<p style="text-align: right;">Page 108</p> <p>1 do 16 hours of reviewing records on one day in April.</p> <p>2 That was in through April and into May. And then I</p> <p>3 reviewed additional this week that just came in that</p> <p>4 were updated.</p> <p>5 Q. Those new records that came in, did they in</p> <p>6 any way change your opinions?</p> <p>7 A. Well, there was one thing that looks like for</p> <p>8 his tube feedings, they're using -- they're being</p> <p>9 done -- the way it reads on the note, it says he's</p> <p>10 drinking his bottles of Pediasure. And I don't know if</p> <p>11 that means he's drinking it with, like, a nipple because</p> <p>12 it specifically says he's drinking his bottles, which</p> <p>13 would mean he doesn't need the tube or the feeding pump.</p> <p>14 And then what he doesn't drink, it says is given by</p> <p>15 gravity, which means you just hang the bag and you count</p> <p>16 the drips so it doesn't run in too fast. But, again,</p> <p>17 it's not on a pump. So if he's not using a pump, then</p> <p>18 he doesn't need a pump in his durable goods.</p> <p>19 Q. So are you taking out the pump on the durable</p> <p>20 goods based on the new records that you saw?</p> <p>21 A. If my assessment is correct, that they're not</p> <p>22 using the pump anymore, then it should be deleted from</p> <p>23 my care plan, yes.</p> <p>24 Q. But you don't know whether that assessment is</p>	<p style="text-align: right;">Page 110</p> <p>1 he'll get bigger. She won't be able to lift him as</p> <p>2 easily, et cetera. And it's also a vigorous strain and</p> <p>3 burden on her to be the only person giving C.B. care.</p> <p>4 So I've allowed --</p> <p>5 (Audio distortion.)</p> <p>6 BY THE WITNESS:</p> <p>7 A. -- a home health aide ten --</p> <p>8 BY MR. CRANE:</p> <p>9 Q. You're breaking up a lot.</p> <p>10 A. I'm sorry. I'm trying to find my page.</p> <p>11 Q. That's -- that's fine. And when you get</p> <p>12 there, can you get let us know where you are?</p> <p>13 A. Sure.</p> <p>14 Q. 16, 17 maybe.</p> <p>15 A. Right. That's on -- okay. So option 1 would</p> <p>16 be care provided by a nursing agency. And I have</p> <p>17 allowed ten hours a day of home health care -- or home</p> <p>18 health aide, which would help with C.B. cares,</p> <p>19 diaper changes, bathing, transferring him in and out of</p> <p>20 his chair, everything but his tube feedings.</p> <p>21 An RN can be provided, and I called and</p> <p>22 spoke with Peak Health Care. And they said they do</p> <p>23 allow one-hour blocks for people that need medications</p> <p>24 or tube feedings, so that they could come twice a day</p>
<p style="text-align: right;">Page 109</p> <p>1 correct based on the information you have at this point.</p> <p>2 You'd just be speculating?</p> <p>3 A. Right. Right. It's -- yeah. It's unclear</p> <p>4 from the records if what I'm thinking is accurate.</p> <p>5 (Audio distortion.)</p> <p>6 (Off-the-record reporter clarification.)</p> <p>7 BY THE WITNESS:</p> <p>8 A. I said it's unclear from the records if what</p> <p>9 I'm thinking is accurate. And the other change would be</p> <p>10 is some of his medications are different than what's in</p> <p>11 the care plan.</p> <p>12 BY MR. CRANE:</p> <p>13 Q. Did you -- in terms of the in-home care, did</p> <p>14 you make a decision as to what would be appropriate</p> <p>15 between an RPN and an LPN and other care providers?</p> <p>16 A. Yes, I did.</p> <p>17 Q. Can you explain for me your -- your thought</p> <p>18 process there?</p> <p>19 A. Well, the thought process is that from birth</p> <p>20 until now, C.B. has not received any in-home care.</p> <p>21 Based on the information that's available to me, mom has</p> <p>22 been doing all of his care and doing a really good job</p> <p>23 at it. However, as he gets older, she is not going to</p> <p>24 be able to do all of these cares by herself because</p>	<p style="text-align: right;">Page 111</p> <p>1 for one-hour blocks to run the tube feeding, which would</p> <p>2 then free up mom to not have to be there for the tube</p> <p>3 feedings.</p> <p>4 And then I also allowed two to four weeks</p> <p>5 depending on parent's discretion of 24-hour care by an</p> <p>6 RN that would allow parents to have no responsibilities</p> <p>7 of C.B. for those two to four weeks per year.</p> <p>8 Q. Okay. So just looking at option 1 real</p> <p>9 closely here. So you've got -- for RN is you provide</p> <p>10 two one-hour blocks a day per -- of care per day. Do I</p> <p>11 have that right?</p> <p>12 A. Yes.</p> <p>13 Q. Are you relying upon an M.D. in any way to --</p> <p>14 for the appropriateness of two one-hour blocks of RN</p> <p>15 care a day?</p> <p>16 A. No.</p> <p>17 Q. Same with home health aide. Are you</p> <p>18 providing -- or are you relying in any way upon an M.D.</p> <p>19 to make that conclusion, that that would be appropriate</p> <p>20 care?</p> <p>21 A. No.</p> <p>22 Q. Same with the last item, the RN for respite</p> <p>23 care for two to four weeks?</p> <p>24 A. No.</p>

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Page 112	<p>1 Q. Just looking at the RN that you have for</p> <p>2 respite care and then scooting over to the right to</p> <p>3 daily costs, \$1,488?</p> <p>4 A. Yes.</p> <p>5 Q. If you go up to the top for the RN and instead</p> <p>6 of providing two one-hour blocks, it was 24 hours, you'd</p> <p>7 be looking -- it would be that 1488 number per day?</p> <p>8 A. I don't know what your question is. If it's</p> <p>9 24 hours, it's -- it'd be 24 times 62, and that gives</p> <p>10 you the 1488.</p> <p>11 Q. Right. And so the 1488 is through Peak Health</p> <p>12 Care, 24 hours of RN care, fair?</p> <p>13 MR. LEIB: I'm sorry. Could you -- could you</p> <p>14 just give me the page again on this thing? I don't</p> <p>15 know --</p> <p>16 MR. CRANE: Page 16 -- page 16, option 1.</p> <p>17 Yeah, I don't think this is -- I'm just trying to</p> <p>18 make sure I'm comparing apples to apples.</p> <p>19 MR. LEIB: Where --</p> <p>20 MR. CRANE: That 1488 --</p> <p>21 Sure. Page 16, option 1, there's an RN,</p> <p>22 two-hour blocks all the time.</p> <p>23 MR. LEIB: Okay. I see there. You requested</p> <p>24 a second RN.</p>	Page 114	<p>1 A. Correct.</p> <p>2 Q. Has anybody -- have you done any assessment as</p> <p>3 to -- well, strike that.</p> <p>4 Is he at risk for developing dental</p> <p>5 problems just because of the fact that he has cerebral</p> <p>6 palsy and is unable to at this point brush his teeth?</p> <p>7 A. He may be at a little increased risk of</p> <p>8 cavities. Higher --</p> <p>9 (Audio distortion.)</p> <p>10 THE REPORTER: Sorry.</p> <p>11 BY THE WITNESS:</p> <p>12 A. -- risk of cavities.</p> <p>13 THE REPORTER: There's interference.</p> <p>14 Anyone else hearing that?</p> <p>15 THE WITNESS: Yeah.</p> <p>16 MR. LEIB: Yes.</p> <p>17 MR. CRANE: We can probably -- somebody</p> <p>18 that's -- well, that's interesting. Somebody needs</p> <p>19 to mute.</p> <p>20 All right. Let me -- I'm getting a lot of</p> <p>21 feedback. Is anybody else getting a lot of</p> <p>22 feedback?</p> <p>23 MR. LEIB: Yes. This is Sam Leib. I'm</p> <p>24 getting a ton of feedback.</p>
Page 113	<p>1 MR. CRANE: Yeah. Where it says daily cost,</p> <p>2 1488, 1,488.</p> <p>3 MR. LEIB: Yeah. I got it now. Sorry about</p> <p>4 that.</p> <p>5 BY MR. CRANE:</p> <p>6 Q. So the daily rate for 24-hour RN care through</p> <p>7 Peak Health Care would be \$1,488?</p> <p>8 A. Yes.</p> <p>9 Q. And if -- rather than for the -- for that</p> <p>10 first RN entry, where you have two one-hour blocks per</p> <p>11 day, if that was instead 24 hours, it would be that 1488</p> <p>12 times --</p> <p>13 A. Yeah.</p> <p>14 Q. -- you know, 365 days.</p> <p>15 That would be the daily rate every day?</p> <p>16 A. Yes.</p> <p>17 Q. All right.</p> <p>18 MR. LEIB: It just came on the screen for some</p> <p>19 reason.</p> <p>20 Now it's gone.</p> <p>21 BY MR. CRANE:</p> <p>22 Q. You note in your -- your plan, dental</p> <p>23 extractions might be necessary depending on how C.B.</p> <p>24 permanent teeth develop?</p>	Page 115	<p>1 THE REPORTER: Can we go off the record?</p> <p>2 MR. CRANE: Yes.</p> <p>3 THE VIDEOGRAPHER: The time is 1:07 p.m.</p> <p>4 We're off the record.</p> <p>5 (Discussion off the record.)</p> <p>6 (Recess.)</p> <p>7 THE VIDEOGRAPHER: The time now is 1:13 p.m.</p> <p>8 We are back on the video record.</p> <p>9 BY MR. CRANE:</p> <p>10 Q. Ms. Kolar, are you a member of the</p> <p>11 International Association of Rehabilitation</p> <p>12 Professionals?</p> <p>13 A. Yes.</p> <p>14 Q. And also the American Association of Nurse</p> <p>15 Life Care Planners?</p> <p>16 I'm sorry. Did you hear me?</p> <p>17 A. Oh, I'm sorry. I answered yes, I'm a member</p> <p>18 of both of those organizations.</p> <p>19 Q. Okay. All right. Thank you. And I -- you</p> <p>20 know, I don't think I did -- you mentioned the two</p> <p>21 depositions you've given. Have you testified at trial</p> <p>22 before?</p> <p>23 A. Yes. That I did -- I thought I viewed</p> <p>24 those -- I've testified three times.</p>

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Page 116	<p>1 Q. Two times in depositions, once at trial?</p> <p>2 A. No. I mean, I've testified three times at</p> <p>3 trial.</p> <p>4 (Exhibit No. 1080 referenced.)</p> <p>5 BY MR. CRANE:</p> <p>6 Q. Got you. All right. I want to take a look</p> <p>7 at -- all right. Exhibit 1080, is that up on your</p> <p>8 screen?</p> <p>9 A. No.</p> <p>10 MR. LEIB: This is Sam. It's not on my</p> <p>11 screen.</p> <p>12 MR. CRANE: Because I didn't do what I needed</p> <p>13 to do. I screwed it up. It's up on my screen.</p> <p>14 MR. LEIB: What -- maybe -- maybe you can</p> <p>15 identify it then so I can --</p> <p>16 MR. CRANE: Yeah. Now, I think -- so it's</p> <p>17 Exhibit 1080, "Materials Sent to Mary Kay Kolar."</p> <p>18 Does anybody see that now?</p> <p>19 THE WITNESS: I see it.</p> <p>20 MR. CRANE: Okay.</p> <p>21 MR. LEIB: Now I've got it. I've got it.</p> <p>22 BY MR. CRANE:</p> <p>23 Q. Okay. All right. What I'd -- what I'd like</p> <p>24 to find out -- and this doesn't have to be -- I just</p>	Page 118	<p>1 Q. Sarah Mulkey?</p> <p>2 A. Yes.</p> <p>3 Q. How about David Gibson? Were you provided</p> <p>4 with his deposition?</p> <p>5 A. Yes. I was -- all of what's on this document,</p> <p>6 I was provided.</p> <p>7 Q. Okay. So I'm going to keep going. So you</p> <p>8 were also provided Dr. Rotenberg, Dr. Schuman, and</p> <p>9 Dr. Ward, right?</p> <p>10 A. Correct. Yes.</p> <p>11 Q. So you were provided six -- well, you also</p> <p>12 were provided Cortney Kaiser's deposition transcript?</p> <p>13 A. Yes.</p> <p>14 Q. So that's seven depositions?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Other than those seven depositions,</p> <p>17 were you provided any other deposition transcripts?</p> <p>18 A. I don't think so, no.</p> <p>19 Q. Okay. All right. And so of those seven</p> <p>20 depositions, did you -- well, strike that.</p> <p>21 When counsel provided them to you, did you</p> <p>22 expect that they -- they thought you would take a look</p> <p>23 at them?</p> <p>24 A. No.</p>
Page 117	<p>1 want to make sure that I have -- I know everything that</p> <p>2 you've -- that encompasses your file. Okay?</p> <p>3 So in this materials -- this list of</p> <p>4 materials, it starts off with depositions that you have</p> <p>5 reviewed. I just want to confirm that you've reviewed</p> <p>6 all of this stuff, okay, and then I want to confirm that</p> <p>7 there's nothing more. If there is something more, I'd</p> <p>8 like to figure out what that is.</p> <p>9 So this document that we're looking at</p> <p>10 here, 1080, have you seen this before?</p> <p>11 A. I have not seen this, and it says materials</p> <p>12 sent to me. That does not mean that I reviewed all of</p> <p>13 these documents.</p> <p>14 Q. Okay. Is there a better source to determine</p> <p>15 everything that you've reviewed in this case?</p> <p>16 A. I don't think that I would prepare what I</p> <p>17 reviewed, but what I was sent. So we can just go</p> <p>18 through this list, and I'll tell you what I reviewed.</p> <p>19 Q. All right. So were you provided with</p> <p>20 Dr. Yarkony's deposition and Exhibits 1 through 6?</p> <p>21 A. Yes.</p> <p>22 Q. Were you provided with Dr. Mulkey's</p> <p>23 deposition?</p> <p>24 A. Dr. --</p>	Page 119	<p>1 MR. LEIB: Object to the form. Excuse me.</p> <p>2 Object to the form. Not likely to lead to</p> <p>3 admissible or discoverable information, what</p> <p>4 counsel was referring to but...</p> <p>5 (Audio distortion.)</p> <p>6 (Off-the-record reporter clarification.)</p> <p>7 MR. LEIB: It's irrelevant what the thought in</p> <p>8 counsel's mind was as to what counsel's</p> <p>9 expectations were.</p> <p>10 BY MR. CRANE:</p> <p>11 Q. Go ahead. You can answer.</p> <p>12 A. I don't know what counsel's expectations were.</p> <p>13 I told counsel that I don't read any information related</p> <p>14 to the liability issues because that's not germane to</p> <p>15 what I've been retained for. So I did not review any</p> <p>16 depositions relating to the labor and delivery, either</p> <p>17 the care itself. I did not review the records for the</p> <p>18 labor and delivery. I did not review any expert</p> <p>19 disclosures for that or their depositions.</p> <p>20 Q. Did you read Dr. Yarkony's deposition?</p> <p>21 A. I did.</p> <p>22 Q. Did you bill for your time in reading it?</p> <p>23 A. Yes.</p> <p>24 Q. Did you read Dr. Sarah Mulkey's deposition?</p>

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Page 120	<p>1 A. No.</p> <p>2 Q. Did you read Dr. David Gibson -- or excuse me,</p> <p>3 David Gibson's deposition?</p> <p>4 A. No.</p> <p>5 Q. Did you read Dr. Rotenberg's deposition?</p> <p>6 A. No.</p> <p>7 Q. Did you read Dr. Schuman's deposition?</p> <p>8 A. No.</p> <p>9 Q. Did you read Dr. Ward's deposition?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know what kind of doctor Dr. Schuman</p> <p>12 is?</p> <p>13 A. She's an osteopath -- osteopath. I don't know</p> <p>14 her specialty.</p> <p>15 Q. Okay. In any event, you were provided her</p> <p>16 deposition, Dr. Rotenberg's deposition, David Gibson's</p> <p>17 deposition, Sarah Mulkey's deposition, and you didn't</p> <p>18 read any of them, true?</p> <p>19 MR. LEIB: Objection. This has already been</p> <p>20 asked and answered. We know that, Ben. Please.</p> <p>21 You can go ahead and answer again.</p> <p>22 BY MR. CRANE:</p> <p>23 Q. Is that true?</p> <p>24 A. True.</p>	Page 122	<p>1 could you have not?</p> <p>2 MR. LEIB: Object to the form and foundation</p> <p>3 and improper hypothetical and it's argumentative.</p> <p>4 You can go ahead.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Why would I do that? I'm asking. If you</p> <p>7 wanted me to -- if you wanted me to act as a copy</p> <p>8 machine, I could have copied it, but I wouldn't do that.</p> <p>9 I wouldn't just blank or flatly adopt his care plan.</p> <p>10 BY MR. CRANE:</p> <p>11 Q. Well, he provided opinions as to life</p> <p>12 expectancy, true?</p> <p>13 A. True.</p> <p>14 Q. He provides opinions as to what level of care</p> <p>15 is appropriate for the child, true?</p> <p>16 A. True.</p> <p>17 Q. Did you do anything to try and incorporate the</p> <p>18 opinions of Dr. Yarkony in terms of life expectancy or</p> <p>19 the proper level of in-home care in -- in putting</p> <p>20 together your life care plan, or did you simply rely</p> <p>21 upon -- or did you discard his information or his -- his</p> <p>22 opinions?</p> <p>23 MR. LEIB: Objection. This has been asked and</p> <p>24 answered. It's argumentative. And it misstates</p>
Page 121	<p>1 Q. Okay. Did you read Cortney Kaiser's</p> <p>2 deposition?</p> <p>3 A. Yes.</p> <p>4 Q. And you billed for your time in reviewing it,</p> <p>5 I take it?</p> <p>6 A. Yes.</p> <p>7 Q. Next, you read Dr. Yarkony's deposition?</p> <p>8 A. Yes.</p> <p>9 Q. In part, you relied upon Dr. Yarkony's life</p> <p>10 care plan to reach your conclusions, did you not?</p> <p>11 MR. LEIB: Objection. It's already been asked</p> <p>12 and answered.</p> <p>13 MR. WEIR: It's been asked and answered, and</p> <p>14 now it's vague and overbroad.</p> <p>15 BY MR. CRANE:</p> <p>16 Q. You can answer it.</p> <p>17 A. I would -- I would not say that I relied on</p> <p>18 his opinions or his report. I would say that I agreed</p> <p>19 with portions of his report, and I put that same</p> <p>20 information in my report.</p> <p>21 Q. If I would have contacted you -- if I would</p> <p>22 have contacted you first and I would have provided you</p> <p>23 with Dr. Yarkony's life care plan, you could have</p> <p>24 done -- you could have done your work in his numbers,</p>	Page 123	<p>1 earlier testimony.</p> <p>2 MR. WEIR: Calls for multiple.</p> <p>3 (Off-the-record reporter clarification.)</p> <p>4 BY MR. CRANE:</p> <p>5 Q. Here, I'll ask it again. In terms of</p> <p>6 Dr. Yarkony's life expectancy opinions and his opinions</p> <p>7 related to the appropriate level of care he thinks that</p> <p>8 C.B. needs, did you incorporate those opinions in any</p> <p>9 way into your life care plan?</p> <p>10 MR. LEIB: Object to the form of the question.</p> <p>11 It's already been asked and answered. And it's</p> <p>12 multiple.</p> <p>13 MR. WEIR: It's also vague.</p> <p>14 BY THE WITNESS:</p> <p>15 A. No.</p> <p>16 BY MR. CRANE:</p> <p>17 Q. Okay. Why not? Why not?</p> <p>18 A. Did you ask -- oh, why not? Because I don't</p> <p>19 agree with them.</p> <p>20 Q. Thank you.</p> <p>21 All right. Do you agree with -- what do</p> <p>22 you agree with regarding Dr. Simms's life expectancy</p> <p>23 opinions?</p> <p>24 A. I --</p>

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<p style="text-align: right;">Page 124</p> <p>1 MR. LEIB: Object to the form of the question.</p> <p>2 It's beyond the scope of the expertise of the</p> <p>3 witness. This has been gone over in great detail</p> <p>4 earlier in the deposition. It's argumentative.</p> <p>5 You can go ahead.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I agree with Dr. Simms' opinion because, to</p> <p>8 me, it makes more sense. I am not qualified to give</p> <p>9 opinions on life expectancy, but my experience with</p> <p>10 children with CP and the issues that C.B. has is that</p> <p>11 I have never seen one live beyond the age of 30.</p> <p>12 BY MR. CRANE:</p> <p>13 Q. How many children are in this group of</p> <p>14 children you're referring to?</p> <p>15 A. Twenty-five.</p> <p>16 Q. Okay. And of those 25 children, how many are</p> <p>17 children that you represented versus ones that you</p> <p>18 prepared life care plans for?</p> <p>19 A. Ten that I --</p> <p>20 (Audio distortion.)</p> <p>21 THE REPORTER: Sorry, sorry, sorry.</p> <p>22 (Off-the-record reporter clarification.)</p> <p>23 BY THE WITNESS:</p> <p>24 A. Ten that I represented. And I think it was</p>	<p style="text-align: right;">Page 126</p> <p>1 deposition.</p> <p>2 Q. Okay. Then -- and -- and in terms of those</p> <p>3 disclosures that we just went through, you -- you</p> <p>4 reviewed those disclosures and you billed for your time</p> <p>5 in reviewing them?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And then the medical chronology, that</p> <p>8 was provided to you by counsel?</p> <p>9 A. Correct.</p> <p>10 Q. Was that the one that has -- it's -- it's</p> <p>11 got -- in red at the top, it mentions that it's</p> <p>12 attorney-client work product or attorney work product,</p> <p>13 something like that? I've seen it before. I'm just</p> <p>14 trying to --</p> <p>15 A. At --</p> <p>16 MR. LEIB: Yeah. It's the same one that was</p> <p>17 given to you previously. We reserve our right to</p> <p>18 object to it, our privilege to it, but we gave it</p> <p>19 to you previously, and that's the same one.</p> <p>20 MR. CRANE: Okay. That's -- I was just trying</p> <p>21 to make sure it was the same one.</p> <p>22 BY THE WITNESS:</p> <p>23 A. But I -- I did not review the chronology. The</p> <p>24 records, the -- what's in my life care plan is all</p>
<p style="text-align: right;">Page 125</p> <p>1 seven care plans. I can't -- now I'm getting confused.</p> <p>2 But I also -- through -- through reading, I read a lot</p> <p>3 of literature on cerebral palsy and studies regarding</p> <p>4 life expectancy. And so through that reading, that's</p> <p>5 been my experience.</p> <p>6 BY MR. CRANE:</p> <p>7 Q. Do you know what level of -- well, strike</p> <p>8 that.</p> <p>9 In addition to Cortney, the -- the</p> <p>10 transcripts that we've talked about, you've looked at</p> <p>11 the damage expert's Rule 26(a)(2) disclosures, I take</p> <p>12 it?</p> <p>13 A. Yes.</p> <p>14 Q. Along with the Exhibits A through G?</p> <p>15 A. Yes.</p> <p>16 Q. You reviewed an excerpt to the plaintiff's</p> <p>17 26(a)(2) disclosures?</p> <p>18 A. Yes.</p> <p>19 Q. Exhibits?</p> <p>20 What -- what does that excerpt consist of?</p> <p>21 A. Dr. Yarkony.</p> <p>22 Q. Anything else?</p> <p>23 A. And Doctor -- I don't remember if your</p> <p>24 disclosures included Dr. Ward, but I did read his</p>	<p style="text-align: right;">Page 127</p> <p>1 generated by me, everything.</p> <p>2 BY MR. CRANE:</p> <p>3 Q. So you didn't -- you didn't look at the</p> <p>4 medical chronology provided by counsel?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And then just moving forward with the</p> <p>7 rest of this list as I scroll down, can you just tell me</p> <p>8 what stuff you didn't look at?</p> <p>9 A. What I did or did not?</p> <p>10 Q. Did not. So beginning with the medical</p> <p>11 chronology and just moving down so we can move a little</p> <p>12 bit more quickly through this.</p> <p>13 So you didn't look at the medical</p> <p>14 chronology.</p> <p>15 Plaintiff's (a)(2) disclosures from</p> <p>16 12/16/19, did you look at those?</p> <p>17 A. Yes.</p> <p>18 (Off-the-record reporter clarification.)</p> <p>19 BY MR. CRANE:</p> <p>20 Q. All right. And then there's a series of</p> <p>21 medical records, and I'm going to try and do this in one</p> <p>22 bite. So from -- the first one I'm looking at is AA28</p> <p>23 through 177 therapy notes, and then it goes all the way</p> <p>24 down to N1-174 from Lurie's. Did you review, to the</p>

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Page 128	<p>1 extent you felt necessary, those records?</p> <p>2 A. Yes.</p> <p>3 Q. And did you bill for your time in that review?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Starting with the record "Babler,</p> <p>6 C.B. J. Medical Recs Monroe Clinic, (certified, from</p> <p>7 client)," right there, do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And then we're going to go all the way down</p> <p>10 and take into account all the way down to "IME Report of</p> <p>11 Mark Simms, MD." Do you see that there?</p> <p>12 A. My screen cuts off with all -- my screen ends</p> <p>13 with records from Monroe Clinic certified. I'm not --</p> <p>14 Q. Okay. I'm trying to -- I'm on the next page.</p> <p>15 Are you seeing me scroll at all now?</p> <p>16 MR. CRANE: Anybody?</p> <p>17 MR. LEIB: Yeah, I see you.</p> <p>18 THE WITNESS: I --</p> <p>19 MR. LEIB: I see that the final one on my</p> <p>20 screen is IME report of Mark Simms.</p> <p>21 BY MR. CRANE:</p> <p>22 Q. Yeah. If you look at the very top --</p> <p>23 A. Yes.</p> <p>24 Q. Okay. At the very top is that last line, the</p>	Page 130	<p>1 the last period of time. You've had a chance to review</p> <p>2 those, I take it, to the extent you feel necessary?</p> <p>3 A. Yes.</p> <p>4 Q. And you either have or will bill for your time</p> <p>5 in having done that review?</p> <p>6 A. Yes.</p> <p>7 Q. Aside from all the documents we've just talked</p> <p>8 about, are there any other documents that you've</p> <p>9 reviewed in coming to your conclusions in this case?</p> <p>10 A. No.</p> <p>11 Q. Okay. Are there any other documents that you</p> <p>12 need to either complete your review or to make your</p> <p>13 opinions more sound?</p> <p>14 MR. LEIB: Object to the form of the question.</p> <p>15 You can go ahead.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Any report by a physician who comments on my</p> <p>18 life care plan, either supportive or nonsupportive, I</p> <p>19 would like to see that.</p> <p>20 BY MR. CRANE:</p> <p>21 Q. And thus far, you've seen nothing supportive</p> <p>22 or not supportive regarding your life care plan from</p> <p>23 some other physician or witness, true?</p> <p>24 A. True.</p>
Page 129	<p>1 Babler medical records certified, and then if you look,</p> <p>2 there's a page break. There's, like, six other sets of</p> <p>3 bills, and then there's the IME report of Mark Simms.</p> <p>4 Do you see that there?</p> <p>5 A. Yes.</p> <p>6 Q. All right. So you -- have you reviewed those</p> <p>7 records and bills and report to the extent you felt</p> <p>8 necessary?</p> <p>9 A. Yes.</p> <p>10 Q. And you billed for your time in doing so?</p> <p>11 A. Yes.</p> <p>12 MR. LEIB: Ben, I know you've already asked --</p> <p>13 excuse me. Just -- I know you've already asked her</p> <p>14 about this. The 6- or 700 pages we got in from UW</p> <p>15 last week or so, I don't know if that's on this</p> <p>16 list.</p> <p>17 MR. CRANE: It's not. It's not. I'm going to</p> <p>18 ask her about it.</p> <p>19 MR. LEIB: Okay. You'll just clarify that,</p> <p>20 you know.</p> <p>21 BY MR. CRANE:</p> <p>22 Q. All right. So -- so we've gone through this</p> <p>23 list of materials. In addition to this list of</p> <p>24 materials, you've got about 600 pages of UW records in</p>	Page 131	<p>1 MR. LEIB: Object to the form of the question,</p> <p>2 misstates the testimony. It's overbroad.</p> <p>3 BY MR. CRANE:</p> <p>4 Q. Did I hear you say "True"?</p> <p>5 A. True.</p> <p>6 MR. CRANE: Okay. Just give me one second.</p> <p>7 I'm almost done.</p> <p>8 All right. So -- all right. That's all I</p> <p>9 have.</p> <p>10 MR. LEIB: Okay. I just -- I've got about --</p> <p>11 (Audio distortion.)</p> <p>12 (Off-the-record reporter clarification.)</p> <p>13 MR. LEIB: Can you hear me now?</p> <p>14 MR. CRANE: Yes.</p> <p>15 MR. LEIB: Okay. And it looks like the Zoom</p> <p>16 thing went away, and now it's rebooting for -- for</p> <p>17 reasons I'm not technically qualified to comment</p> <p>18 on. But is everybody okay if -- if the court</p> <p>19 reporter can hear me that we just -- let me just</p> <p>20 ask my clarifications just hearing me?</p> <p>21 MR. CRANE: Sure.</p> <p>22 MR. WEIR: This is Weir. Yes.</p> <p>23 MR. LEIB: Okay. I guess I'm back on. I -- I</p> <p>24 see my own face.</p>

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Page 132	<p>1 MR. CRANE: Hey, Todd -- can I interject one</p> <p>2 second? Todd, I promise you no one is ever going</p> <p>3 to question who's talking when -- when you -- you</p> <p>4 don't even have to announce your name. You have --</p> <p>5 you have the most distinctive voice I've ever</p> <p>6 heard. We know it's Weir.</p> <p>7 MR. LEIB: Mary, can you see me now?</p> <p>8 THE WITNESS: I cannot because that document</p> <p>9 is still up on the screen.</p> <p>10 MR. CRANE: Oh, I thought I --</p> <p>11 THE REPORTER: I can -- I can see Mr. Leib</p> <p>12 now.</p> <p>13 MR. LEIB: Hey, Ben, it's the old document on</p> <p>14 the screen trick, huh?</p> <p>15 MR. CRANE: Yeah. Sometimes better stuff ends</p> <p>16 up there than others, you know.</p> <p>17 MR. LEIB: Okay. Are we okay now?</p> <p>18 THE WITNESS: I still can't see you. I can</p> <p>19 see Todd and the court reporter.</p> <p>20 MR. CRANE: I think we can -- go ahead.</p> <p>21 MR. LEIB: I don't know -- I don't know if</p> <p>22 it's necessary. But if you look at "Speaker View,"</p> <p>23 if you click "Speaker View," it'll -- it'll allow</p> <p>24 you to see the speaker. But is -- is it okay,</p>	Page 134	<p>1 MR. CRANE: Objection, foundation.</p> <p>2 Go ahead.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Yes, I have an opinion.</p> <p>5 BY MR. LEIB:</p> <p>6 Q. And what is that opinion?</p> <p>7 A. That it is.</p> <p>8 Q. The report of Dr. Simms that you reviewed is</p> <p>9 dated May -- May 12th, 2020?</p> <p>10 A. Correct.</p> <p>11 Q. Yes. Okay. In that report, there</p> <p>12 is reference to Dr. Simms' opinions that to a</p> <p>13 reasonable degree of medical certainty, that</p> <p>14 there is less than a 50 percent probability that</p> <p>15 C.B. -- sorry, that CB will live to the age of</p> <p>16 33 years by -- when you read that in the report and</p> <p>17 based upon that opinion by Dr. Simms, did you</p> <p>18 incorporate in your report the 33 years as -- as</p> <p>19 being the point that he would probably not live</p> <p>20 beyond based upon Dr. Simms' opinions?</p> <p>21 A. Yes.</p> <p>22 Q. You are not qualified, nor are you intending</p> <p>23 to give opinions regarding life expectancy of the child;</p> <p>24 is that fair?</p>
Page 133	<p>1 Ms. Kolar, if we just go ahead, or do you want us</p> <p>2 to --</p> <p>3 THE WITNESS: Sure. I can see you now.</p> <p>4 MR. LEIB: Okay. Good.</p> <p>5 EXAMINATION</p> <p>6 BY MR. LEIB:</p> <p>7 Q. So, Ms. Kolar, you were asked questions about</p> <p>8 your life care plan. First of all, do you have an</p> <p>9 opinion to a reasonable life care planner certainty that</p> <p>10 your life care plan was done with appropriate</p> <p>11 methodology?</p> <p>12 (Audio distortion.)</p> <p>13 THE REPORTER: I'm sorry. I didn't get an</p> <p>14 answer.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I have an opinion.</p> <p>17 BY MR. LEIB:</p> <p>18 Q. And what is that opinion?</p> <p>19 A. That it was.</p> <p>20 Q. Your life care plan, do you have an opinion to</p> <p>21 a reasonable life care certainty that the information</p> <p>22 contained in it is appropriate to the life care --</p> <p>23 future life care of CB, which is the -- we're required</p> <p>24 to use the initials of the child?</p>	Page 135	<p>1 A. That's fair.</p> <p>2 Q. Your background and experience you</p> <p>3 were asked about by Mr. Crane tells you that</p> <p>4 Dr. Yarkony's life expectancy -- normal life</p> <p>5 expectancy, it transcends common sense in your</p> <p>6 experience; is that fair?</p> <p>7 MR. CRANE: Objection, foundation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Yes.</p> <p>10 BY MR. LEIB:</p> <p>11 Q. And have you told us on the record the basis</p> <p>12 for your opinion in that regard?</p> <p>13 A. Yes.</p> <p>14 Q. Dr. Simms also notes in his report, "It is my</p> <p>15 opinion that C.B. could be cared for appropriately in</p> <p>16 a nursing home facility in the future." Do you recall</p> <p>17 reading that in his report?</p> <p>18 A. Yes.</p> <p>19 Q. And you made reference in this deposition to</p> <p>20 the diligence that you utilized in determining that</p> <p>21 Marklund Wadmon [sic] -- and that's M-a-r-k-l-u-n-d, new</p> <p>22 word, Wadmon, W-a-d-m-o-n -- I think I spelled it</p> <p>23 right -- is a -- an appropriate facility for CB to</p> <p>24 reside at; is that correct?</p>

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<p style="text-align: right;">Page 136</p> <p>1 A. Very appropriate, yes.</p> <p>2 Q. And that is a long care nursing home type</p> <p>3 facility; is that correct?</p> <p>4 A. Yes. It's a facility that is accredited for</p> <p>5 caring for children and into their adulthood with</p> <p>6 developmental disabilities. So it's specifically geared</p> <p>7 for taking care of kids like CB.</p> <p>8 Q. Okay. Thank you.</p> <p>9 And the -- the medical examination</p> <p>10 assessment that was done by Dr. Simms, when you talked</p> <p>11 to -- spoke with him on the phone, was there discussion</p> <p>12 regarding his -- I think I may have muted -- yeah -- was</p> <p>13 there discussion regarding the examination that he would</p> <p>14 be doing?</p> <p>15 A. Yes.</p> <p>16 Q. And you tendered a listing of questions, and</p> <p>17 it was disclosed in the rider then -- you tendered a</p> <p>18 listing of questions that could be asked in lieu of your</p> <p>19 going with some personal contact with mom during the</p> <p>20 pandemic; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And was it your understanding that this</p> <p>23 examination by Dr. Simms was going to be videotaped</p> <p>24 along with his discussion with mom?</p>	<p style="text-align: right;">Page 138</p> <p>1 May 22nd?</p> <p>2 MR. LEIB: Let me just interrupt -- because</p> <p>3 his report has May 22nd on the cover page, and then</p> <p>4 at the -- at the header at the top of the page, it</p> <p>5 says May 12th. I just noticed that. There's only</p> <p>6 one report. It's 13 of 13 pages, and I think we</p> <p>7 could -- you know, we could probably determine</p> <p>8 which is the accurate date. But there is only one</p> <p>9 report, to my knowledge.</p> <p>10 BY THE WITNESS:</p> <p>11 A. And that's the report that I have seen.</p> <p>12 BY MR. CRANE:</p> <p>13 Q. Okay. And you've had -- again, you've had</p> <p>14 this conversation with Dr. Simms about your work in this</p> <p>15 case?</p> <p>16 A. Yes.</p> <p>17 Q. You have no notes from that conversation?</p> <p>18 (Audio distortion.)</p> <p>19 THE REPORTER: I'm sorry. I'm sorry. I</p> <p>20 didn't get an answer on that.</p> <p>21 BY THE WITNESS:</p> <p>22 A. No.</p> <p>23 BY MR. CRANE:</p> <p>24 Q. And just -- just for clarity, you have no</p>
<p style="text-align: right;">Page 137</p> <p>1 A. Yes.</p> <p>2 Q. And you do not have the benefit of that</p> <p>3 videotape or discussion with mom; is that correct?</p> <p>4 A. I do not.</p> <p>5 Q. All of that aside, do you feel that you have</p> <p>6 had a fair and accurate opportunity -- even though you</p> <p>7 didn't get the video recording of that examination and</p> <p>8 discussion by Dr. Simms, do you feel that this life care</p> <p>9 plan is appropriate and consistent with standard of care</p> <p>10 methodology of life care planners as you've tendered it</p> <p>11 in this case?</p> <p>12 A. Yes.</p> <p>13 MR. LEIB: That's all I have. Thanks.</p> <p>14 FURTHER EXAMINATION</p> <p>15 BY MR. CRANE:</p> <p>16 Q. Can you let me know --</p> <p>17 MR. CRANE: I'm sorry. Todd, do you want to</p> <p>18 ask questions?</p> <p>19 MR. WEIR: No.</p> <p>20 BY MR. CRANE:</p> <p>21 Q. Can you let me know -- the report of</p> <p>22 Dr. Simms that you have, I've heard two different</p> <p>23 dates and I want to make sure we're operating off</p> <p>24 of the same one. The report that you have, is it dated</p>	<p style="text-align: right;">Page 139</p> <p>1 notes from your conversation with Dr. Simms?</p> <p>2 A. No, I do not.</p> <p>3 MR. WEIR: Not unless you made them in the</p> <p>4 last three hours.</p> <p>5 BY MR. CRANE:</p> <p>6 Q. And what's your definition of qualified</p> <p>7 experts, the -- the phrase that you use in your</p> <p>8 report?</p> <p>9 A. Well, that would be someone with the requisite</p> <p>10 education, training, and experience to express opinions</p> <p>11 about which they have the requisite education, training,</p> <p>12 and experience.</p> <p>13 Q. Okay. So you've read Dr. Yarkony's</p> <p>14 deposition. Do you believe he's qualified to render the</p> <p>15 opinions he's offered?</p> <p>16 MR. LEIB: Let me just object to the form of</p> <p>17 the question and foundation. It invades the</p> <p>18 province of the jury. They get to determine</p> <p>19 whether or not he's credible.</p> <p>20 MR. WEIR: It's also overbroad.</p> <p>21 BY THE WITNESS:</p> <p>22 A. My personal opinion of Dr. Yarkony is he's</p> <p>23 qualified as a physician. I don't know that he's</p> <p>24 actually qualified as a life care planner. He has not</p>

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<p>1 taken any training as a life care planner, and his --</p> <p>2 his report does not conform to the standards of a</p> <p>3 certified life care planner.</p> <p>4 BY MR. CRANE:</p> <p>5 Q. If you're not -- if you don't have a</p> <p>6 foundation without M.D. blessing to offer future medical</p> <p>7 care beginning at -- at -- at 13, how is it that you're</p> <p>8 able to offer the appropriate in-home care -- opinions</p> <p>9 as to the appropriate in-home care for the entire</p> <p>10 lifetime?</p> <p>11 MR. LEIB: It's been asked and answered.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Because medical care involves physicians, the</p> <p>14 frequency that the -- or other providers, getting</p> <p>15 medications, that type of thing, orders.</p> <p>16 In-home care is more of an</p> <p>17 assessment-based, what kind of care, what level of care</p> <p>18 does this child need that would be safe and would follow</p> <p>19 his needs if there should be any kind of foreseeable</p> <p>20 medical emergency. That does --</p> <p>21 (Audio distortion.)</p> <p>22 (Off-the-record reporter clarification.)</p> <p>23 BY THE WITNESS:</p> <p>24 A. And I said a physician is not required to set</p>	<p>1 this?</p> <p>2 MR. CRANE: The court reporter has them all,</p> <p>3 and I -- I'm asking her to attach them.</p> <p>4 MR. LEIB: Okay. That's good.</p> <p>5 THE VIDEOGRAPHER: The time now is 1:47 p.m.</p> <p>6 We are off the video record. That's the end of the</p> <p>7 deposition.</p> <p>8 (The deposition concluded at 1:48 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 the foundation for that -- for the level of care that</p> <p>2 C.B. -- excuse me -- CB needs.</p> <p>3 BY MR. CRANE:</p> <p>4 Q. You believe that a medical opinion is</p> <p>5 unnecessary to set what level of care CB needs, true?</p> <p>6 MR. LEIB: Objection. It's --</p> <p>7 BY THE WITNESS:</p> <p>8 A. Correct.</p> <p>9 MR. LEIB: -- argumentative. It's been asked</p> <p>10 and answered.</p> <p>11 Go ahead.</p> <p>12 MR. WEIR: It's also overbroad.</p> <p>13 MR. LEIB: Did you get the answer, Mary?</p> <p>14 BY THE WITNESS:</p> <p>15 A. I said -- I -- to answer his question, I don't</p> <p>16 believe a physician has to have foundation for the level</p> <p>17 of care in home that C.B. needs.</p> <p>18 MR. CRANE: All right. That's all I have.</p> <p>19 MR. LEIB: Okay.</p> <p>20 MR. CRANE: I'm done.</p> <p>21 MR. LEIB: Okay.</p> <p>22 MR. WEIR: All right, everyone. Take care.</p> <p>23 MR. LEIB: Let me just ask, what -- what are</p> <p>24 we -- what are we going to do with the exhibits on</p>	

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REPORTER'S CERTIFICATE

I, Mary T. Murphy McGuirk, a Certified
Shorthand Reporter of the State of Illinois, do hereby
certify that the foregoing was reported by stenographic
and mechanical means, which matter was held on the date,
and at the time and place set out on the title page
hereof, and that the foregoing constitutes a true and
accurate transcript of same.

I further certify that I am not related to
any of the parties, nor am I an employee of or related
to any of the attorneys representing the parties, and I
have no financial interest in the outcome of this
matter.

IN WITNESS WHEREOF, I do hereunto set my hand
in Tinley Park, Illinois, this 26th day of June, 2020.

Mary T. Murphy-McGuirk



Mary T. Murphy McGuirk
Certified Shorthand Reporter
CSR Certificate No. 84-4160